

MONTANA ARTS COUNCIL

AN AGENCY OF STATE GOVERNMENT

Strengthening the Creative Economy of Montana

POLICY BOOK

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Montana Arts Council Policy Book

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MONTANA ARTS COUNCIL

AN AGENCY OF STATE GOVERNMENT

Strengthening the Creative Economy of Montana

MISSION STATEMENT

The Montana Arts Council is the agency of state government established to develop the creative potential of all Montanans, advance education, spur economic vibrancy and revitalize communities through involvement in the arts.

VISION STATEMENT

Montana will be known far and wide as "The Land of Creativity," where the arts are essential to the creativity, imagination and entrepreneurship that make Big Sky Country the very best place on earth to live, learn, work and play.

MONTANA ARTS COUNCIL CHARTER

PROVIDING FOR THE ESTABLISHMENT OF A COUNCIL ON THE ARTS AND HUMANITIES IN THE STATE OF MONTANA AS AUTHORIZED IN HB12, 40TH LEGISLATIVE SESSION, 1967.

SECTION 1. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana Arts Council is hereby created as an agency of state government.

SECTION 2. The Montana Arts Council shall consist of fifteen members appointed by the Governor, by and with the consent of the Senate. Insofar as possible, the Governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

SECTION 3. The term of office of each member shall be five years, provided, however, that, of the members first appointed, five shall be appointed for terms of one year, five for terms of three years, and five for terms of five years. The Governor shall designate a Chairman and a Vice-Chairman from the members of the Council to serve, as such, at the pleasure of the Governor. The Chairman shall be the chief executive officer of the Council. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the Council shall not receive any compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the Council.

SECTION 4. The Council may select an executive committee of five members and delegate to the committee such functions, in aid of the efficient administration of the affairs of the Council, as the Council deems advisable.

SECTION 5. The Chairman may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

SECTION 6 The duties of the Council shall be

1. To encourage, throughout the state, the study and presentation of the arts and to stimulate public interest and participation therein;
2. Cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theater, dance, painting, sculpture, architecture, and the allied arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;
3. To foster public interest in the cultural heritage of our state and to expand the state's cultural resources;
4. To encourage and assist the freedom of artistic expression essential for the well-being of the arts;

5. To report to the Governor and the Legislature prior to the end of each even-numbered year. The report shall include a statement of all important activities and transactions of the Council, with suggestions and recommendations for the better realization of the purposes of the Council and the healthy growth and development of the arts in Montana.

SECTION 7. The Council may accept, receive and administer, in the name of the Council any gifts, donations, properties, securities, bequests and legacies that may be made to it. Monies received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the Council. The Council is the official agency of the state to receive and disburse any funds made available by the National Endowment for the Arts.

SECTION 8. The Council may contract with individuals, organizations and institutions for services or cooperative endeavors furthering the objectives of the Council's programs.

SECTION 9. The Council may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation, and programs of the Council.

MONTANA ARTS COUNCIL BYLAWS

ARTICLE I COUNCIL

SECTION 1. The Chairman of the Council "...shall advise the Governor with respect to the development of the arts and humanities in the State of Montana. The Chairman shall be assisted in the discharge of this duty by the members of the Montana Arts Council as duly appointed by the Governor.

SECTION 2. The Chairman shall, with the advice and consent of the Council, employ, supervise, direct, oversee and evaluate the activities of the executive director of the Council who shall be an employee of the State of Montana. Through the executive director, other employees of the Montana Arts Council shall be directed in like manner.

SECTION 3. The Chairman shall establish an executive committee and select the members thereof, subject to the advice and consent of the Council, provided, however, that the persons appointed by the Chairman shall serve until disapproved by the Council and until their successors are selected and confirmed.

SECTION 4. It is understood that there may be occasions when the Chairman cannot perform his/her duties. Accordingly, the Vice-Chairman shall act as Chairman for specified purposes or for general purposes and for such a time as the Chairman may establish.

SECTION 5. The executive director of the Council shall serve as permanent secretary to the Council during the Executive Director's tenure. The Executive Director shall be responsible for reporting the proceedings of the Council and shall, unless the Chairman otherwise directs, carry on all the official correspondence for the Council.

SECTION 6. The Council shall meet at least two times per year at such time and place as the Council may direct. It shall be the duty of the executive director, as secretary, to arrange and give notice of said meetings and to prepare and distribute in advance an agenda for said meetings as the Chairman may direct.

SECTION 7. The Chairman and Vice-Chairman shall serve on the Executive Committee, as well as three additional council members selected by the Chairman, with the approval of the council.

SECTION 8. All meetings of the Council shall be at the call of the Chairman. Eight members of the Council shall constitute a quorum. The Chairman shall vote only in case of a tie on any question voted on by the Council. The Chairman shall conduct the proceedings of all Council meetings in accordance with Robert's Rules of Order.

ARTICLE II

ADVISORY PANEL MEMBERS

It is understood that local efforts in the encouragement, the stimulation, and the enrichment of the arts and humanities are essential to the development of them. Such interests and geographic areas within the State of Montana will be useful in the implementation of the tasks with which the Council is charged and should have special relationship to the Council through a designated panel Chairman.

SECTION 1. Accordingly, in addition to the statutory members of the Council, advisory members or committees may be appointed to the Council. Advisory members shall be given notice of time, place and purpose of each of the meetings of their respective panels. Advisory members shall have the full right to propose items for the council's statutory agenda through their respective committee or panel Chairman, and to attend and participate in discussion and deliberation of the council meetings, but shall not be accorded a vote other than in an advisory capacity. The Chairman or a majority of the members of the Council shall determine when advisory opinions will be requested from advisory members.

SECTION 2. There shall be no limitation on the number of advisory members; and they shall be appointed, except as previously stated or as below provided, from time to time upon the majority vote of the members of the Council.

SECTION 3. Advisory members appointed by the Council shall serve for two years. They may be reappointed at the will of the Council. Advisory members shall submit, using forms provided by the council, a confidential statement listing all groups or organizations that are potential Montana Arts Council grant recipients and may constitute a conflict of interest. Involvement may include, but shall not be limited to, participation as a member, trustee, director, consultant, advisor or teacher. Advisors are prohibited from receiving a salary or personal reimbursement, other than for travel and per diem, from Montana Arts Council grant money.

ARTICLE III

ORGANIZATION FOR ACTIVITIES OF THE COUNCIL

SECTION 1. The work of the Council may be delegated by the Chairman to committees, commissions and the executive director. Each committee and commission shall contain at least one member of the Council.

SECTION 2. Committees shall be considered temporary unless otherwise specified at the time of the creation.

SECTION 3. The executive director may, from time to time, be delegated the responsibility, by the Chairman or Council, to accomplish certain specified objectives and work of the Council. Generally, the Executive Director shall be responsible for coordination of the work of the Council and the commissions established by the Council. The Executive Director shall communicate to members of the Council the work progress and problems of their administrative office, the committees of the Council and the commissions of the Council. The Executive Director shall be responsible to suggest, from time

to time, ideas, which the Council might implement by itself through The Executive Director's office, through committees and through commissions. The Executive Director shall constantly keep the Chairman advised of problems, ideas and developments, which may be implemented through the Executive Director's office, through the Council, through committees of the Council or commissions of the Council.

SECTION 4. Members of the Council charged with specific areas of responsibilities shall, from time to time, suggest, for consideration by the Chairman, activities, which can be implemented by the executive director through the Council, through committees and through commissions.

ARTICLE IV

SECTION 1. Official communications of the Council shall be the responsibility of the executive director acting as permanent secretary of the Council unless otherwise specifically directed by the Chairman of the Council.

SECTION 2. The executive director shall make periodic reports to the Council (both members and advisory members) concerning the work of the Council, the Executive Director's office, the committees and the commissions no later than two weeks prior to a duly called and scheduled meeting of the Council. Said report shall contain sufficient information so as to avoid delay in transmission of information at a Council meeting.

ARTICLE V

DISBURSEMENTS AND GRANTS

SECTION 1. The executive director, unless otherwise directed by the Chairman, shall expend the appropriated funds of the Council, in the manner provided in the budget, as approved by the Council. The Executive Director shall require no further authority in expenditure of funds than the approved budget. Supplemental appropriations to the budget shall be expended in that manner approved therein and as amended and directed by the Chairman.

SECTION 2. In its function, of recommending and making grants to others for specified purposes, it shall be the responsibility of the Council to approve projects and appropriations thereto. The Council may, at the discretion of the Chairman of the Council, request recommendations from others, including advisory panels, committees, commissions and the executive director. In this connection, all advisory panels and advisory assistance shall be organized according to the above stated policies concerning the organization of committees and commissions.

ARTICLE VI

AMENDING THE BYLAWS

SECTION 1. These Bylaws may be amended (including revocation) from time to time, by a majority of the members of the Council at any meeting of the Council, provided a quorum is established.

AS APPROVED AND AS AMENDED BY A QUORUM OF THE MONTANA ARTS COUNCIL AS RECORDED IN THE MINUTES OF THE TWENTY-SECOND MEETING, THE CHARTER AND BYLAWS AS HEREIN CONTAINED IS ADOPTED ON JUNE 28, 1970, AND SUBSEQUENTLY AMENDED THROUGHOUT THE HISTORY OF THE COUNCIL.

OCTOBER 23, 2004, THE CHARTER, BYLAWS AND POLICIES ARE AMENDED AND RATIFIED BY A QUORUM OF MONTANA ARTS COUNCIL MEMBERS.

PRESENT: Bill Frazier, Chairman, John Dudis, Vice-Chairman, Marilyn Olsen, Betti Hill, Stan Lynde, Linda E. Reed, Jennifer Earle Seifert, Jackie Parsons, Mary O. Crippen, Dee Heltne

ABSENT: Kari Lee Knierim, Ann Cogswell, Rick Halmes, Neal Lewing

FOUNDING LEGISLATION

82A-501.1. Allocation to the State Board of Education. The State Historical Society, the Montana Arts Council, and the State Library Commission are allocated to the State Board of Education for the purposes of planning and co-ordination. Budget requests to the state for these agencies shall be included with the budget requests of the State Board of Education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the State Historical Society, in the Montana Arts Council, and the State Library Commission.

82A-501.2. Intent of Act. It is the intent of this act to comply with the spirit of executive reorganization and yet to acknowledge that departmentalization as set forth in the Executive Reorganization Act of 1971 is incompatible with the constitutional and statutory structure for governance of Montana's educational and cultural entities.

82A-508. Montana Arts Council. (1) The Montana Arts Council, created in Title 82, Chapter 36, R.C.M. 1967, and its functions are continued. (2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of Council members remain as prescribed by law.

82-3601. Montana Arts Council Created—Purposes. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element, which makes living and vacationing in Montana desirable to the people of other states, the Montana Arts Council is hereby created as an agency of state government.

82-3602. Appointment of Council Members —Qualifications. The Montana Arts Council shall consist of fifteen members appointed by the Governor, by and with the consent of the Senate. Insofar as possible, the Governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

82-3603. Terms of Council Members—Chairman and Vice-Chairman —Vacancies—Expenses of Members. The term of office of each member shall be five years; provided, however, that of the members first appointed, five shall be appointed for terms of one year, five for terms of three years, and five for terms of five years. The Governor shall designate a Chairman and a Vice-Chairman from the members of the Council to serve as such at the pleasure of the Governor. The Chairman shall be the chief executive officer of the Council. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the Council shall not receive any compensation for their services, but shall be reimbursed for travel expenses, provided for in Section 59-538, 59-539, and 59-801, incurred in the performance of their duties as members of the Council.

82-3604. Executive Committee—Functions. The Council may select an executive committee of five members and delegate to the committee such functions in aid of the efficient administration of the affairs of the Council as the Council deems advisable.

82-3605. Employment of Officers and Employees—Compensation. The Council may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

82-3603. Duties of the Council. The duties of the Council shall be: (1) to encourage throughout the state the study and presentation of the arts and to stimulate public interest and participation therein; (2) to cooperate with public and private institutions engaged within the state in artistic and cultural activities, including, but not limited to, music, theatre, dance, painting, sculpture, architecture and other allied arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation to meet the legitimate needs and aspirations of persons in all parts of the state; (3) to foster public interest in the cultural heritage of our state and to expand the state's cultural resources; (4) to encourage and assist freedom of artistic expression essential for the well being of the arts; (5) to report as provided in Section 2 of this act.

82-3607. Gifts and Donations Received—Deposit and Use. The Council may acquire, accept, receive, dispose and administer in the name of the Council any gifts, donations, properties, securities, bequests and legacies that may be made to it. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor shall be deposited in the earmarked revenue fund of the state treasury and used for the general operation of the Council. The Council is the official agency of the state to receive and disburse any funds made available by the National Endowment for the Arts.

82-3608. Contracts for Services and Cooperative Endeavors. The Council may contract with individuals, organizations and institutions for services or cooperative endeavors furthering the objectives of the Council's programs.

82-3609. Fund Raising Drives—Deposit and Use of Proceeds. The drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the earmarked revenue fund of the state treasury and may not be used for any purposes other than the improvement, development and operation, and programs of the Council.

BRIEF HISTORY

The Montana Arts Council was created by executive order of Governor Tim Babcock on April 22, 1965. Dean Charles Bolen of the School of Fine Arts at the University of Montana was the first Chairman. Late in 1966, after the first Governor's Conference on the Arts in Butte, the survey, of the arts in Montana, required by the National Endowment for the Arts was completed, and a report was submitted to the Governor and to the state. During the 40th Legislative Assembly, House Bill 12 made the Montana Arts Council an official agency of state government in 1967.

During the first years, the staff—a secretary, Jo-Anne Mussulman, and a part-time director, Luther Richman—ran the operation from free office space in the University of Montana, Fine Arts building on a budget of \$12,000. The Council of 15 appointees distributed under \$40,000 of National Endowment grant money.

The next legislature allocated \$25,000 for each of the two years, but no program funds. A full-time director, Edward Groenhout, and the secretary moved to quarters near the mezzanine of the University of Montana Theater. This was the Montana Arts Council office for the next few years.

The Montana Arts Council survived executive reorganization only because of the vigilance of a former Montana Arts Council member who was also a legislator and lawyer. The Montana Arts Council was placed under the Board of Education for state budgetary purposes, along with the Historical Society and the Library Commission. Dean Bolen left Montana, and Dean Harold Rose of Montana State University was appointed as Chairman, a position, which he held until 1972 when he was appointed to chair another state board. At that time, Edward Groenhout left for an academic position at Montana State University. David Nelson was hired, as executive director and Maxine Blackmer, the Vice-Chairman, became the Chairman.

In 1970, a full-time coordinator, Pat Simmons, was hired for the Artists-in-Schools program, the Montana Arts Council's largest continuing statewide program. A modest increase in the Montana Arts Council staff (from two to four) and a vast increase in services necessitated a move to larger quarters off campus.

The state authorization of only 4 FTEs put a heavy burden on a dedicated staff. There were also several contract employees who worked for the Arts Council through the Montana Institute of the Arts Foundation. The major problem for the Council at that time was lack of state program support and additional authority to make others working for the council state employees, rather than as contractors through the Montana Arts Foundation.

The Basic State Grant from the National Endowment and additional federal program grants helped the Council to meet some of its requests.

(Note: The above history was written by Jo-Anne Mussulman, taking the agency's history through the latter 1970s. The agency moved to Helena in 1984.

In 1992, David Nelson and Jo-Anne Mussulman retired. Arlynn (Arni) Fishbaugh was hired as the Executive Director in November 1992. At the time, the staff had grown to 11 FTE, as authorized by the

state. Larry D. Williams was Chairman of the council at the time. In 1994, Larry did not seek re-appointment so that he might serve as the Chairman of the WESTAF(Western States Arts Federation) Board. Attorney Bill Frazier, of Big Timber, was appointed as the new Chairman by Governor Racicot (who also appointed him to a second five-year term in 1999.)

The mid-1990's saw substantial growth in federal funding to the council, reaching a high of \$795,090 in 1996. The programmatic areas of the council flourished and included organizational and artist services, arts education, rural arts, folk arts, communications and administration of the Cultural Trust grants as well as agency administration.

The 1997 federal funding cuts resulted in a 40% reduction in Montana's federal funding to the agency. The council made as a priority grant programs and restructured internally and reduced the number of staff by 40%.

The restructuring, that developed through 1998-2000, streamlined internal operations and grant procedures. Project grants for arts organizations were changed to operating support, the most valuable type of funding for these groups, and these grants were made biennial, rather than annual, awards. The arts education roster for artist residencies was eliminated, and an artist listing was developed instead, and all artist-in-Schools/Communities applications were done through the web. The council authorized the arts education director to approve all grants under \$2000, and all other arts education grants were reviewed by an arts education committee of the council. Technical assistance was outsourced to the private sector through a new Arts Pro program, consisting of experts throughout Montana providing this aid and paid an hourly rate by the council. In addition, a Professional Development grant program was developed to fund artists and organizations' professional development needs, such as workshops, trainings, conferences, etc. Immediate Action grants were changed to Opportunity Grants and artists were made eligible for funding, in addition to organizations, by treating those awards as contracts payable upon receipt of their expense receipts. Underwriting grants that funded individual presenters were changed to Tour Fee Support grants to fund Montana touring organizations, since 85% of the underwriting grants went to the same Montana touring companies. The agency's bi-monthly newsletter *ArtistSearch* was greatly expanded to a tabloid 24-36 page newspaper renamed *State of the Arts*, and established a reputation as the country's finest state arts agency newspaper.

During 1998-2000, staff restructuring aligned itself to these new priorities, and the increased demand for access to information through the world-wide-web and the need for increased database capabilities. Programmatic staff structure changed to also accommodate the skills of the people in, or being hired for, MAC positions. As a result, the directors of areas included Arts Education/Web Services, Grants/Database Development, Folk Arts, and Communications, coupled with the services of the Deputy Director/Accountant and an executive and an administrative assistant.

State general fund continued to grow very slowly, as it had since the agency's inception. Following the devastating federal cuts in 1997, there was an increase in general fund to pay for the technical assistance programs newly developed.

During the late 1990s and early in 2000, the agency shifted priorities to build public awareness about the value of the arts and the arts council, as well as to reinforce the public value of supporting the arts throughout the state.

The “public value” work done by the agency since that time has established MAC as a national leader in this arena. The agency consistently ranks in the top group of state arts agencies in the country during NEA grant review. MAC has worked hard to keep money going out the door to constituents while keeping operations streamlined.

Launched in 2006, Public Value Partnership grants fund operating support for Montana’s staffed arts organization. These grants are the core of the agency’s grant programs, and all grant programs in the agency have a tie-in wherein grantees talk about the public value of the service/organization/effort that is being funded with state dollars.

The Artist Innovation Awards were established in the 2009, the Montana Circle of American Masters program and the Montana Artrepreneur Program (MAP) were established at approximately the same time. The MAP program, in particular, has become a national model for teaching artists marketing and business skill development. The agency received private foundation and U.S. Department of Agriculture funding for this highly successful program.

Federal funding has gone up and down since 2000. In FY2014, the agency experienced a cumulative 20% cut in federal funding. A small portion of this was offset by state general fund during the FY13 legislative session. During the time in which Governor Schweitzer was in charge, with the exception of his first year in office, there was no increase slated for the agency in his budgets. Efforts to have increased general fund from the state remained a challenge through the 2013 session.

The Founding of the Montana Arts Council *As Told by Jim Haughey*

One of Montana’s finest sons, Jim Haughey of Billings, died in September 2017. Jim was in his 90s and lived a full and vibrant life as a lawyer, artist, statesman, arts patron and arts advocate. He was exemplary in all roles he took in his life.

Jim was the man who, as a state senator, crafted legislation that created the Montana Arts Council in 1967. He told the story of what led to the establishment of the council at the September 1995 meeting of the Montana Art Gallery Directors Association (MAGDA) during their fall annual meeting at Chico Hot Springs. We print this in memory of Jim, who was a council member when I was hired, and such a dear friend to so many.

– Arni Fishbaugh, Executive Director

The cultural climate: Past, present and future by Jim Haughey and the history of the Montana Arts Council.

Written for presentation to the Montana Art Gallery Director's Association -- 1995

Considering recent developments, one might easily be pessimistic about the cultural climate in Montana,

as well as nationwide. A cynic might characterize Montana's cultural climate, past, present, and future, as nonexistent, mediocre and dismal.

But we cannot afford to be cynical, and considering all that's happened in the last half century there is good reason for long-range optimism.

Few of you here tonight are old enough to be aware of the state of the arts in Montana when Katie (Jim's wife) and I came here 52 years ago. Certainly in Billings there was little arts activity.

LeRoy Greene, a fine painter, was well known and very popular in Billings. There were a few other artists working professionally around the state, but if one were to have asked literate, educated Montanans whether they could name any Montana artists, the response likely would have been, "Well sure, Charlie Russell was a great artist."

There were hardly any museums or galleries in Montana in the early 1940s and of the 22 gallery members of MAGDA, probably only the C.M. Russell Gallery then existed. Illustrative of what people thought about art is a statute, enacted in 1947, which established what was later designated the Montana Fine Arts Commission. The statute did not even use the word "art."

It authorized the governor to constitute a commission with himself as chairman to secure and design a statue of Charlie Russell, to attend to its construction, and to have it placed in the national statuary hall in Washington, DC. That is all the Legislature thought the state needed to do about art in 1947.

Nothing was done under the statute until it was amended in 1955 to provide that the Montana Fine Arts Commission should consist of the governor, then Hugo Aronson, the director of the Montana Historical Society, then K. Ross Toole, and a third member. I was that member appointed by the governor.

We did get the statue designed, made and installed in Washington after a very long, tortuous and sometimes humorous effort. I wish I had time to tell you about that.

In the late 1940s activities in the arts in Montana did start to pick up. Several artists, mostly members of faculties in Montana colleges, were painting professionally.

Billings had a little theater group and a community concert series; and the first Yellowstone Art Center was started in 1950 by several residents who were interested in drawing and painting, photography and ceramics.

With volunteer help we rebuilt the top floor of the old chamber of commerce building, and many activities were carried on in the building for about a year and a half, until the chamber found that it could rent to the Air Force the space which we had made usable. The reason for the chamber's change of heart was that it could collect a rent of \$500 per month from the Air Force, while we were paying only \$50 a month.

The Montana Institute of the Arts, widely known as MIA, was started in 1948. For its time the MIA was unique. It was the first statewide arts organization in the nation formed to broaden participation in the arts, to encourage support for the arts, and to make possible interrelationships among individual artists of all disciplines. As Bob Fehlberg said, "At a time when resources and communication between artists

and their public were scarce, MIA was the glue that held the arts together.”

The decade of the 1950s marked a period of growth and relative prosperity. People were confident and the arts started burgeoning. MIA membership was growing rapidly and at one time over 20 branches had been established in cities and towns throughout the state.

Other local arts groups were also being formed. They needed professional advice assistance and the MIA board hoped it could fill that role; but to do so it needed funds and a vehicle for raising funds. After four years of discussion and planning, the Montana Institute of the Arts Foundation was incorporated in 1965 and qualified as a 501(c)(3) tax-exempt corporation. That organization has become the Montana Arts Foundation.

The MIA lacked the cohesiveness needed to function as a “clearing house” for the arts, and its membership in most towns began to drop. During this same period in the early ’60s a national movement for public support of the arts was developing, and the National Endowment for the Arts and the National Endowment for the Humanities were established by federal statute in September 1965.

In that same year, Charlie Bolen, then dean of the School of Fine Arts at the university in Missoula, urged Gov. Tim Babcock to appoint a Montana Arts Council. By executive order, on April 22, 1965, the governor did so, and I happened to be one of the 24 members appointed.

It soon was realized that the council should be a formal state agency and thus qualified to receive grant funds from the NEA. Since I was in the State Senate in 1967, I drew a bill to give the council formal state agency status. The bill received strong support and it was enacted as the first substantive law of the 1967 session.

The 20 years between the enactment of the 1947 and 1967 laws relating to Montana arts witnessed a major change in public thinking about the arts. The 1947 act was silent about the arts, although under the act Montana did designate an artist as entitled to the honor of representing the state in the National Statuary Hall and ours was the only state to do so.

The 1967 statute recognized the importance of the arts in the lives of Montana citizens. It required the Montana Arts Council to encourage the study and presentation of the arts, to stimulate public interest and participation in arts activities, to expand the state’s cultural resources, and to encourage and assist freedom of artistic expression essential for the well-being of the arts.

The arts council has carried out those duties with remarkable success, considering the sparse population and broad expanse of the state and the paucity of available funding. Thank the Lord for the National Endowment and for the funds provided by the Cultural and Aesthetic Trust Fund during the last 20 years.

In the last half century many thousands of Montanans, in cities, town and hamlets, and on farms and ranches, have had heartwarming, inspiring experiences in the arts. Many thousands have become artists and practitioners of the arts; and many tens of thousands of our citizens, through their own arts experiences, have come to realize the vital importance of the arts to our people, young and old.

Unfortunately, many people, many legislators, here and on the national level, still think the arts are nice to have around but are really not important and surely don't deserve any public funds. I leave it to Bill Frazier and John Frohnmeyer to tell you about the cultural climate in the present and future; but when one considers how greatly that climate has improved in the last 50 years, we surely should be heartened.

ROLE OF THE COUNCIL

(Adopted May 21, 1979)

The Council is the appointed group that governs the state arts agency. The Council is the major policy-making body of the agency. It is the role of the Council to:

1. Interpret the statute under which the Council operates,
2. Adopt a budget for the Council as developed and proposed by the staff in cooperation with the Chairman,
3. Select, hire and discharge when necessary the executive director of the Council,
4. Agree upon the terms of employment for the executive director including term of appointment, evaluation and procedure for termination,
5. Periodically review and reevaluate Council policy, operational and program guidelines,
6. Approve the "plan" for budget and program structure for the Council (development of programs is a function of staff, panels, and Council committee structure) and delegate some authority to staff for project approval within previously approved programs,
7. Set operational guidelines—i.e., those interpretations of policy, which deal with administration and program procedures of the Council,
8. Be an advocacy organization for the arts by virtue of its existence within state government,
9. Carry out its duties as enumerated in Section 6 of the Charter.

ROLE OF COUNCIL MEMBERS

(Adopted May 21, 1979; AMENDED OCTOBER 23, 2004)

Council members shall:

1. Attend meetings and participate in Council activities,
2. Prepare for Council meetings by reviewing available materials in advance,
3. Be acquainted with the full spectrum of the cultural resources within the state,
4. Act without self-interest despite identification with a particular geographic area, arts discipline and/or institution,
5. Support in a positive manner, all actions taken by the council even when you are in a minority position on such actions. The most credible boards speak with one voice once a decision has been made,
6. Not, as individuals, commit the council to any action,
7. Assume the responsibilities of a council member as stated in the Charter and Bylaws,

8. Understand that administrative issues are the responsibility of management and the governance issues are the responsibility of the council. Respect the need for the Executive Director to report only to one "Boss," the Chairman,
9. Keep confidential information, confidential,
10. Exercise authority as a council member only when acting in a meeting with the full council or as delegated by the council or council Chairman,
11. Promote unity within the organization.
12. Maintain loyalty and honor his/her commitment to the agency and its work.

Montana Arts Council

COUNCIL ROLE VISION

(Adopted September 1994)

Now and in the future, the Montana Arts Council will be innovative, visionary and shall provide creative leadership and direction to carry out the Montana Cultural Vision. It is our goal to integrate the arts into all facets of life, preserving and nurturing our unique cultural heritage by recognizing the diversity of our state.

We will build a positive relationship between the Council and its constituents based on honesty and fairness, leading to positive partnerships and collaboration. We will be supportive and accessible, and provide a sounding board for the diverse artistic community.

Respectful of the responsibilities of staff, we will strive to be nurturing, supportive, collaborative and decisive as we work toward our common goals.

The Council, as individuals, will be visible advocates of the arts in their communities and support the arts through participation, financial support and following through on Council initiatives. We will play the role of "scout" in discovering and encouraging arts endeavors.

In the next two years, as cultural cheerleaders, we will communicate with our legislators and create public awareness of the positive measurable effects of the arts on learning abilities and quality of life, including the economy of the state. We, as the Council, will assess our progress frequently, evolving in response to the needs of the artistic community.

ROLE OF CHAIRMAN

(Adopted May 21, 1979)

The role of the Chairman is:

1. To work in close partnership with the executive director,
2. To represent the Council to the staff,
3. To prepare for and Chairman Council meetings,
4. To take responsibility for initiating the process for making appointments to the Council, Council committees and advisory panels,

5. To ensure that the Council remains informed between meetings,
6. To act as a facilitator in Council meetings,
7. To act as official liaison with the Governor's office,
8. To be an official spokesperson for the Council,
9. To serve as ex-officio member of all Council committees,
10. To carry out duties of the office as specified in the Charter and Bylaws.

ROLE OF EXECUTIVE DIRECTOR

(Adopted May 21, 1979)

1. The executive director:
2. Has the responsibility and authority to hire, supervise and dismiss staff,
3. Has the responsibility and authority to determine job assignments,
4. Has the responsibility and authority for submitting grant applications in accordance with policies approved by the Council and to process them to completion,
5. Has the responsibility for development of the Council's budget in consultation with the Chairman (and other governmental agencies when required),
6. Is the chief fiscal officer for the Council,
7. May be given discretionary authority to approve grants within the program guidelines established by the Council,
8. Is responsible for the relationship between the Council and state government, and between the Council and other outside agencies,
9. In concert with the Council committees, and the Chairman, the executive director should frame questions of policy to present to the Council for discussion and resolution,
10. Has responsibility for reviewing consistency and continuity of Council policy and making suggestions for change,
11. Is responsible for implementing both short and long-term policies of the Council,
12. Should stay well-informed about cultural activities and provide this information to the
13. Council,
14. Has the responsibility to provide timely information concerning the activities of the Council to the public and to the legislature,
15. Has a responsibility for initiating programs within the framework of Council approved planning,
16. Should make recommendations to the Chairman concerning appointments to Council panels and committees,
17. Should report periodically to the Council concerning all activities of staff and Council,
18. Should work with the Chairman and the Council to carry out the directives specified in the Charter and Bylaws.

POLICY ON CONFLICT OF INTEREST AND ETHICS

Issue: The Montana Arts Council, as a state agency, which has discretion over and responsibility to administer significant amount of public money, must maintain a high level of integrity and credibility with the people it serves. In maintaining an atmosphere that is free from undue influences, there is need for a well-defined policy that eliminates any potential conflicts of interest. As we operate in a public trust, it is not enough to have impeccable ethical standards. We must also make visible the method by which we assure those standards.

Concerns:

1. People are chosen for participation on the board of the Montana Arts Council because of their demonstrated involvement in the arts. It is likely that from time to time Council members will have a conflict of interest and therefore must absent themselves from a debate or decisions, which could be construed as a conflict of interest.

See below: Representatives of State at Large
Disqualification from Participation in Grant or Fellowship review
Member Applications

2. It would place unfair burdens on Council members if they were not allowed to participate in activities that are supported by grants.

See below: Affiliations with Organizations
Organization Membership

3. A mechanism is needed whereby artists, who are Council members, may receive reasonable honorariums from activities, which are funded in part by Montana Arts Council grant funds, so long as they have no influence over the decision on such grants.

See below: Personal Art Activities

MAC grants to individuals require that Montana Arts Council members, staff or grant panelists and members of their immediate families or individuals sharing their household be ineligible to apply.

4. The advisability of accepting gifts or complimentary tickets from sub-grantees.

See below: Gifts

5. The ethics of disseminating information about deliberations on grants.

See below: The Influence of Voting
Public Minutes and Grant Deliberation

6. SEE **APPENDIX A. PARTS A-E: FOR STATUTES ON PUBLIC COMMENT AND OPEN MEETINGS AND CODES ON ETHICS AND MEMBERS AS PUBLIC EMPLOYEES**

Representatives of State at Large:

When a Council member is appointed by the Governor, he or she becomes a representative of the state at large; therefore, the council member must agree to act on behalf, and in the best interests of the state. They must set aside specific concerns for the institution or program operating in their geographic area. However, it seems prudent to realize that people are appointed to the Council for specific reasons, i.e., to represent an art form or to provide representation from a geographic area, and from time to time they will advocate stronger support for their fields of interest. To the degree that their comments affect the state in general, it should not be perceived as a conflict of interest.

Disqualification from Participation in Grant or Fellowship Review:

When during deliberation, on individual grants or fellowships, a conflict of interest is declared, determined or suspected, the individual(s) will be excluded from participating in any vote or discussion leading to a decision with which they have a conflict of interest. In cases where a conflict of interest is not clear but could be viewed by others as a possibility, the Chairman has the responsibility of ruling on the situation and establishing procedure.

(Adopted 2/91)

No Council member or panelist may sit on a panel who has an application under consideration or who serves on its board.

Member Applications:

Montana Arts Council members, staff or panelists and members of their immediate families or individuals sharing their household are ineligible for grants or Governor's Arts Awards from the Montana Arts Council while serving or employed and for 12 months after leaving service. Members/staff are eligible for direct grants from the National Endowment for the Arts and other foundations not governed by the Montana Arts Council.

Affiliations with Organizations:

Montana Arts Council members-consultants-employees should not disqualify themselves from participation in the arts, and arts organization, or in projects supported by the Montana Arts Council. Affiliation with an outside organization does not create a conflict of interest per se. Affiliated is defined as: having some substantial role or financial involvement as a user or benefactor of an organization. Affiliated does not usually include such things as: being a member of an arts organization or being a musician, dancer, choral member, or actor in non-profit organizations. It does, however, mean such things as: a director, officer, trustee, employee or the direct beneficiary of a significant amount of money from a grant as well as being a member(s) of immediate family, or individuals sharing the households of an employee, panelist or arts Council member.

Organization Membership:

All Council members and advisory panel members are asked to fill out a confidential statement of organizations to which they are affiliated. It further states, on the form filled out by all, that “Advisors” (Council members is inferred) are prohibited from receiving a salary or personal reimbursement for other than travel, honorarium as provided by state law, and per diem from Montana Arts Council grant money over which they exercise any influence unless written exception is provided. During the vote to allocate grant funds, exceptions to the conflict of interest policy may be granted if the board concurs with a 2/3rds paper ballot vote of the quorum (and after excluding any individuals with a conflict of interest with the issues being voted upon).

Personal Art Activities:

Members of the Council must be allowed to continue to function as artists; however, discretion must be used so that they pursue these private activities as individuals and not as a representative or in the name of the Council. This is particularly sensitive if Council members or consulting artists do workshops or jury shows with honoraria coming from Montana Arts Council grant sources. Even this may not create conflict of interest per se; however, at the time the grant allocation is made, an exception to the above stated policy, may be granted by the Council provided the fees are reasonable, and desire for their artist’s service is justified by the sub-grantee, and the Council concurs by a 2/3 paper ballot vote of a quorum present (excluding any individuals with a conflict of interest upon the issues being voted.)

Gifts:

Council members and staff are prohibited from soliciting, accepting, or agreeing to accept any gift of money, goods, loan or services or to engage in any gift of money, goods, loan benefits which, would improperly influence or have the appearance of improperly influencing them in their Council-related duties and responsibilities. Generally, Council members and staff do not accept complimentary tickets to arts events unless they have agreed to provide a written evaluation of the artistic event. When assigned to evaluate an event, ticket costs are reimbursable. Exempted from concern are the art objects that, from time to time, are displayed in the office and for which appropriate records are kept identifying the loans/gifts and their value.

The Influence of Voting:

Council members, staff and panelists are prohibited from attempting to influence the vote, of Council members or panelists, on applications or any other matter involving applicants with whom they are affiliated.

Public Minutes and Grant Deliberation:

Minutes of the advisory panel meetings and Council meetings are open for public scrutiny. These minutes, as they pertain to grant allocations, shall contain the agreed upon reasons for funding or not funding specific grants. It has been assumed that it is unethical for Council members or advisors to discuss statements made concerning grants, which are not part of the official meeting minutes. Announcement of grant awards is the function of the Council staff.

POLICY ON SABBATICALS

(Adopted June 13, 2006)

Should a council member become unable to fulfill his/her duties as a council member due to unforeseen circumstances, the Montana Arts Council's sabbatical system allows for a leave of absence for up to six months. This sabbatical may be requested by any member or may be offered to a member by the Chairman or Vice-Chairman. The decision to issue a sabbatical will be made by the Executive Committee.

During the time of a sabbatical, leadership positions and committee assignment shall be turned over to another council member. All mailings and meeting materials will continue to arrive, but no response is expected allowing for the complete respite a sabbatical would provide.

POLICY ON COMMITTEE ORGANIZATION

(Adopted April 2, 1982)

In general, all regular Council committees and appointments have been made by the Council Chairman, in consultation with the executive director and the executive committee, then brought to the Council for approval. Advisory panels are the exception (see section on Advisory Panels).

The Council Chairman appoints all committee members, with the approval of the Council, and is an ex-officio member of all committees. These committees may have working meetings at each Council meeting, and may hold such conferences and meetings as are deemed necessary between scheduled Council meetings. A staff member is provided to each committee for administrative assistance. The Council Chairman may appoint ad hoc committees for special concerns, when these concerns do not fall into the province of other committees.

Executive Committee Appointment:

Charter, Section 4; Legal Code 82-3604

Bylaws, Article 1, Section 3 Duties:

Bylaws, Article 1, Section 7 Additional:

The executive committee will serve as liaison to the staff during the year, will act on matters requiring attention between Council meetings, and will report on these to the full Council. It will also assist the Chairman in determining the procedures for an evaluation of the executive director on a regular basis, as needed (updated December 2015).

POLICY ON APPOINTING STANDING COMMITTEE MEMBERS

(Adopted 10/93)

Council members must either be involved in the process of selecting standing committee members or be notified in advance to ratify the selections.

DEFINITION OF “MAJORITY”

(Adopted December 2011)

The Montana Arts Council defines “majority” as meaning the majority of council members in attendance, provided a quorum is reached.

SELECTION OF ADVISORY PANELS

(Adopted August 6, 1979; Amended 10/04)

Selection of Grant Advisory Panel Members

Council members, sub-grantees, staff and interested public will be asked to recommend persons for appointment to the various grant advisory panels. Panelists will serve for one year (but can be re-appointed).

Grant panelists will be selected to ensure artistic excellence, outstanding knowledge of the subject area, representation of views of the Montana public, geographic balance, cultural diversity, a balance of rural and urban representation and gender balance.

Grant panel suggestions will be submitted to the Chairman for his/her final selection of panelists, which is then sent to the panel Chairman for his/her approval.

In the interest of reinforcing the public value of Montana Arts Council programs, a current or recent member of the Legislature or other political leader may be appointed to any panel.

For major organizational grant programs, each panel shall also have one out-of-state member. The total number of panelists for each panel will be determined by the Executive Director and the Chairman based upon the program’s needs, budget and the expertise necessary.

POLICY ON PANELISTIS PER DIEM

(Adopted 6/94; Amended 10/04)

Those panelists who disburse money, in meetings or teleconferences that last longer than two hours, as well as the Percent for Art architects will be paid \$50 a day for their services as members of a panel.

POLICY OF PARTICIPATION OF COUNCIL MEMBERS ON PANELS

(Adopted 6/86; Amended 10/04 and 02/06)

The council will appoint a council member as a Chairman to each panel. The Chairman may not vote but is encouraged to participate in any discussion. The council will determine, for each grant program, what the appropriate panel make-up should be as to whether or not there will be voting council members on it.

POLICY ON UNIVERSITY UNITS AS SUB-GRANTEES

(Adopted May 21, 1979)

Grants made to any of the university units, or departments thereof, or to any of the private educational institutions in the state should be for programs that primarily emphasize "outreach" projects or programs, that can be of benefit to the community and to other areas of the state, or that are directed to the public as a whole, rather than limited to the concerns of the university.

POLICY ON STUDENT PROJECTS AND ACTIVITIES

(Adopted August 6, 1979)

Students enrolled in an educational institution and operating under its aegis are generally not eligible for grants.

POLICY STATEMENT REGARDING ART COMPETITIONS AND YOUTH

(Adopted June 1986)

The Montana Arts Council and the Montana Alliance for Arts in Education (MAAE) recognize and value the diversity of creativity that is exhibited in the artwork of our youth. The Council and the Alliance encourage youth to experience, experiment with, learn about and explore the many areas of creative work including: dance, drama, media arts, music, visual arts and crafts, and writing.

The Montana Arts Council and the Montana Alliance for Arts in Education also believe that recognition of such activities should primarily serve the needs of the students and the goals of education; secondarily, an activity can serve other interests of the sponsoring organizations if there is no negative impact to the project or the child. No competition should occur for students before the ninth grade.

The Montana Arts Council and the Montana Alliance for Arts in Education further believes that a legitimate objective, of such an activity, is the encouragement of excellence; but competition for honors should not overshadow the purpose of developing the abilities of all potential entrants. Moreover, the Council and the Alliance urge that the standards —listed below— be observed during all activities involving dance, drama, media arts, music, visual arts and crafts, and writing:

1. Instructions to potential entrants should be clearly stated.

2. Criteria, on which entries will be judged, should be described to all concerned, including the students. If several criteria are differentially weighted, this information should also be given.
3. Qualifications of the judges should be stated.
4. Participation should be voluntary; no student should be required to prepare a potential entry.
5. Public awareness and understanding of creative work in our state should be increased by the activity.

The Montana Arts Council and the Montana Alliance for Arts in Education urge sponsors to observe these guidelines and encourage teachers and students to participate only in those activities, which meet the above-stated policy standards.

POLICY ON EVALUATION OF SUB-GRANTEES

(Adopted August 6, 1979, Amended Oct. 23, 2004)

An annual final report is required of every grantee. Continued funding is dependent on successfully fulfilling obligations and agreements lined out in the contract. The final report will include financial information required by the National Endowment for the Arts and the Montana Arts Council. Other information deemed appropriate for collection and review can be determined by the Chairman, the Executive Director, the Committee Chairman, and/or the Director of that grant program.

On-site evaluations will be conducted as the budget allows.

POLICY ON GEOGRAPHICAL DISTRIBUTION

(Adopted July 15, 1977)

1. The cornerstone of the Montana Arts Council's grants policy must be—as it has always been—based upon decision-making that focuses on the quality of the programs involved, rather than by any arbitrary formula for geographical distribution of awards. It is recognized that this policy may in some cases operate to the disadvantage of the smaller communities and the more sparsely populated areas of the state, where groups and individuals eager to undertake programs of quality are fewer and further apart; nonetheless it is seen as the best and fairest way to make monetary awards. In implementing this policy, the director and staff will attempt to make sure that no program of merit is ignored because of its proponents' lack of experience in the application procedure. To this end, the director and staff may act in an advising and counseling capacity, and will take special care to be helpful with applications from communities, which have not previously received grant awards.
2. At the same time, a primary mission of the Montana Arts Council is to ensure that every Montanan, regardless of geographic location, has access to the arts. The Council, through the director and the staff, will use whatever means are available in a continuing effort to provide every part of the state with opportunities to enjoy traveling exhibits, concert tours, workshops and demonstrations, panel discussions, regional festivals, and other such transportable arts activities. Projects of this kind may be encouraged with funds and/or Montana Arts Council personnel involvement—the goal is to distribute them equitably over the entire state so that no community will lack the opportunity for some kind of experience in some form of the arts.

3. These policies will necessarily influence decisions in some other areas of concern. Several readily come to mind:
 - A. Grants to individual artists should, whenever possible, take the form of commissions for work, which will be performed or displayed in communities without a rich artistic endowment; however, such grants should be made only on the basis of the quality of the artist's work without reference to his or her place of residence.
 - B. Support for well-established institutions and performing groups should be, whenever possible, in the form of funding for programs that will be carried outside the city of origin for the benefit of the surrounding region.
 - C. Services to small communities, artist-in-residence programs, co-operation with local arts groups, and other outreach programs, which aim to provide arts experiences and opportunities for small and middle-sized communities should be coordinated and integrated to avoid duplication of effort and to assure equitable distribution of arts activities throughout the state.

POLICY ON COMMISSIONS FOR VISUAL ARTISTS

Issue:

The Council has had, and will continue to have, the responsibility, from time to time, of selecting artists and artwork for various purposes. The variety of categories are envisioned as:

1. Purchasing a completed work of art,
2. Commissioning an artist to produce artwork,
3. Holding a competition or request for project proposals to produce artwork for a specific site. The method of selection in any of these instances should be spelled out in the application process as adhering to all Council policies and complying with all local, state, and federal laws.

Concerns:

Policy must be realistic and sensitive to the fact that the majority of artists are one person "shops" operating on a very narrow profit margin; i.e., if acquisition rules and procedures demand a finished product before payment, most artists will be precluded from participation. Artist selection, and the selection of artwork, is a highly visible and usually controversial activity when taxpayers' money is involved. Proper administration of a selection process is essential; however, it should be in line with the cost of materials and labor expended on the selection; i.e., it would seem ludicrous to spend \$2,000 administering a \$2,000 commission. There are many, and even complicated rules, regulations and responsibilities that are inherent in installing art in public places. Among them are:

1. Who owns the object and is liable for it?
2. Who is responsible for the cost of repairs?
3. Who should repair?
4. Relocation—who has authority?
5. Copyrights and reproduction rights to drawings, models or maquettes
6. Who pays for installation?
7. Artist's personal liability during the commission
8. Who shall settle disputes or contested decisions?
9. What happens in event of death or disability of the artist before end of commission?

10. Rights to freedom of expression by the artist through the work
11. Conflict of interest

Policy:

The Montana Arts Council will consider commissioning, purchasing, or conducting competitions for artworks to be created on behalf of the public or for the use by the general public only when funds are on hand or committed in writing, that include the following:

1. Cost of installation
2. Cost of all aspects of production
3. Cost of administration, including cost for assembling juries
4. Those responsible for building and/or grounds in which the artwork will be installed or located have agreed to accept responsibility for the art

In commissioning artwork, the Council will entertain submissions from established as well as relatively unknown artists and concentrate on quality rather than personality. The main objective is to fit the appropriate artist to the kind of art best suited to the environment in which it is to be placed.

Selection Procedures:

The method of selection shall be by a jury of a majority of art professionals appointed by the Montana Arts Council. In some instances, where a small amount of money is involved and/or it is not feasible to convene a formal outside jury, a committee composed of members and staff of the Montana Arts Council may act in its stead.

1. The number serving on a jury shall be flexible depending on size and complexity of project.
2. The jury shall consist of: a practicing artist not in competition, an appropriate design person not in competition, and a representative from the contracting or funding source. The remaining jurors shall be other than those directly involved in the project and may be selected from the following areas in whatever combination best applies: museum director or curator, art historian, art collector, art educator, lay members of the public, out-of-state artists, professional artists.
3. Advisors (non-voting) to the jury include the Chairman of the Council's visual arts advisory panel, the executive director or a designee, and the Chairman of the Council.
4. Travel and per diem will be paid for the jury and advisors. Jury members, other than the Council members, will be paid an honoraria to be established by the Council according to the kind and length of their service
5. The jury will be instructed that the quality of the artwork is the highest priority, and that if the advisory panel agrees not to choose any of the artists, who have submitted the work, the competition will be re-opened. This statement should be included in all competition announcement materials.
6. Due consideration will be given to structural and surface soundness and to permanence in relation to theft, vandalism, weathering, or excessive maintenance or repair for commissions in public places.
7. In commissions involving competitions:
 - a) The jury may be instructed to select one artist from the material submitted for their review.
 - b) The jury may be directed to choose two or more finalists, and they may request

further studies, maquettes or scale work-ups from the artist. In this event, the artist will be reimbursed an appropriate amount for his/her work.

Artist Eligibility:

Montana artists will be given preference but competitions for major works will not be limited to Montana artists unless required by contractor or funding source. The reason for not limiting the artist selection to Montanan's is based on the fact that if we were to do so, other states may not allow Montana submissions for their artist projects because our policy restriction.

General Principles and Procedures:

1. All parties will refrain from any actions, which would inhibit the artist in reaching creative solutions to design problems. The artist, on his or her part, must be sensitive to the unique qualities of the public and the guidelines and parameters, which may, of necessity, have been agreed upon.
2. All appropriate parties will strive to publicize widely all aspects of the commission or
3. project.
4. 3. All procedures will be conducted and all decisions will be made free of any conflict of
5. interest.
6. All drawings, models or maquettes remain the property of the artist. The copyright or reproduction right belongs to the funding source or the State of Montana.
7. The artist will guarantee his or her work against faulty execution and defective or inferior materials or workmanship for one calendar year after acceptance and during that year, the artist shall repair, restore or replace the work of art at his or her own expense.
8. Payment for the work of art will be scheduled to allow commission money to be used for the purchase of materials and other costs directly related to the production of the artwork.
9. Disputes over items not covered in agreement will be decided by the Montana Arts Council during regular meetings. Decisions will be made in writing and furnished to the artist. Pending a final decision, the Montana Arts Council may request that the artist proceed diligently with the commissioned artwork.
10. In the event of the artist's death or disability, the Council may elect to acquire the unfinished work after paying a proportional amount based on the work accomplished.
11. If repairs or relocation of the artwork is required, the artist and the Montana Arts Council shall be consulted and Council approval obtained.

COUNCIL INITIATED PROGRAMS

(Adopted May 21, 1979)

A special category may be established in the budget for Council-initiated programs for which there is a definite need. If a consensus of approval is obtained, staff should be consulted and an estimate of probable cost obtained. During a Council meeting, the matter of final approval and budgeting should be considered.

LUTHER RICHMAN AWARD

(Adopted October 19, 1981)

1. The award shall be a Council-initiated program and is to be awarded by the Council.
2. The award is to be presented to a living Montanan "In Recognition of Outstanding Service to the Arts in Montana."
3. The award is to be signed by the Montana Arts Council Chairman and the Governor.
4. The award is not to be presented at a regular interval, but when the Council determines that a person or persons is deserving of the award.
5. The award is to be presented by the Montana Arts Council Chairman at a scheduled meeting of the Council during a special dinner and is to be appropriately covered by the media.
6. Expenses are to come from a budget line item established for the award.
7. The award is not competitive, i.e., recipients are to be selected by the Council.
8. The award shall consist of an original hand-written certificate signed by the Montana Arts Council Chairman and the Governor.

Luther Richman Award Winners

- 1) Terry Melton
- 2) H.G. Merriam
- 3) David Shaner
- 4) Claudette Morton

POLICY ON THE GOVERNOR'S AWARDS FOR THE ARTS

(Adopted October 1985)

The Governor's Arts Awards are to recognize and honor living Montana artists. A potential recipient must be alive when nominations are submitted to the Governor, but the award may be given posthumously.

POLICY ON RESPONSIBILITY FOR AIRLINE AND HOTEL RESERVATIONS

(Adopted September 12, 1980; Amended 10/04 and 12/15)

Council members and grant panelists are asked to RSVP their attendance at Council Meetings and/or events, and council staff makes all hotel reservations. Council members and panel members are responsible for notifying the office 24 hours in advance if they are not able to attend the Council or panel meeting and accept the reserved accommodations, otherwise the Council members or panel members are liable for the billing of the room reserved on their behalf.

POLICY ON REVISITING COUNCIL POLICY

(Adopted February 4, 1995)

It has been decided that revisiting an established Council policy must be done through an official meeting or teleconference, not through individual polling.

POLICY ON TERM LIMITS ON CULTURAL AND AESTHETIC APPOINTMENTS

(AMENDED October 23, 2004)

As established in legislation, eight members of the Cultural and Aesthetic Projects Advisory Committee are appointed by the Montana Arts Council for terms of four years. Individuals appointed to the committee may be reappointed and there are no term limits.

504 RESOLUTION

(Adopted March 13, 1980)

Be it resolved that the Montana Arts Council reaffirms its commitment and fully supports the Civil Rights Act of 1964 and the Rehabilitation Act of 1973, Section 504, which bars discrimination on the basis of race, color, national origin, sex, age, or handicap. The Montana Arts Council is committed to ensuring that opportunities to attend cultural programs and to participate in creative experiences are available to all.

MONTANA ARTS COUNCIL APPEALS POLICY AND PROCESS

The Council staff handles all questions regarding grant decisions by first reviewing records of the panel and Council sessions to review the procedures and discussions that led to the decision. This information is sent to the applicants, who also may review the primary materials. A staff person will also consult with the applicant to improve any subsequent application.

An applicant who remains dissatisfied can set the appeals process in motion by formally asking for reconsideration. At this point, the following procedure is implemented:

1. The Council's Executive Committee considers the request and makes a recommendation.
2. At its next meeting, the full Council hears the request and the Executive Committee's recommendation and decides whether to reject the request, and then refers it back to the panel for further review.
4. Finally, the applicant is notified of the Council's decision.

APPEAL HEARING PROTOCOL

1. In accordance with Montana state law, and the Montana Arts Council's policy which states that its grant panel meetings are open for observation by the public, the Executive Committee and full Council meetings in which a grant award appeal is reviewed, shall also be open to the public for observation.
2. An agenda will be set for the appeal hearing, and the meeting will be conducted according to the agenda. The formal written appeal will be entered into the public record.
3. Public comment will be taken during this hearing, including the grant applicant making the appeal, if they so wish.
4. All recommendations and decisions made by members of the Montana Arts Council will be based solely upon adherence to published agency policy, guidelines and review criteria.

Acronyms You May Hear at the Montana Arts Council

ADA	Americans for Disabilities Act
AIA	Artist's Innovation Awards
AIS/C	Artists in the Schools/Communities Program, <i>Montana Arts Council Program</i>
BAP	Building Arts Participation: <i>MAC's grant program funded through the Wallace Foundation, formerly known as the Lila Wallace-Reader's Digest</i>
BCA	Business Committee for the Arts <i>National service organization connecting business and the arts</i>
BSG	The National Endowment for the Art's Basic State Grant <i>Now called the "Partnership Agreement"</i>
C&A	Cultural and Aesthetic grant program
501 c 3	IRS code for non-profit education organizations; most arts organizations in MT
504	Section of the '83 Rehab Act – <i>Access for people with disabilities</i>
GAA	Governor's Arts Awards
IMLS	Institute of Museum and Library Services <i>Federal agency specifically providing operating support to museums and libraries</i>
LAO	League of American Orchestras <i>Nat'l service organization for symphonies</i>
LFA	Legislative Fiscal Analyst
MAC	Montana Arts Council
MAP	Montana Artrepreneur Program
MAGDA	Museum Art Gallery Director's Association <i>Statewide service organization for art museums and galleries. Conducts annual block-booking conference for exhibit tours throughout Montana</i>
MASO	Montana Association of Symphony Orchestras <i>Statewide service organization for Montana symphonies that provides professional development, a centralized music library for orchestras and chorales.</i>
MCAM	Montana Circle of American Masters
MDAA	Montana Dance Arts Association <i>Statewide dance service organization that offers bi-annual dance workshops with outstanding national dancers for young Montana dance students</i>
MNA	Montana NonProfit Association
MPAC	Montana Performing Arts Consortium <i>Statewide network of arts presenters who meet annually to conduct professional development for touring artists/companies and performing arts presenters, as well to present a showcase of touring artists for block-booking across Montana</i>
NASAA	National Assembly of State Arts Agencies
NCSL	National Conference of State Legislators
NEA	National Endowment for the Arts
NGA	National Governor's Association

NISP	National Information Standards Project <i>National coding for types of arts funding</i>
NEH	National Endowment for the Humanities
OBPP	Office of Budget and Program Planning
OPI	Office of Public Instruction, <i>State education agency</i>
PVP	Public Value Partnership grants <i>MAC's operating support grants for arts organizations</i>
SAA	State arts agency
SHPO	State Historic Preservation Office
SIG	Strategic Investment Grant
SSO	Statewide Service Organization
TA	Technical Assistance
TCG	Theatre Communications Group <i>National service organization for theatres</i>
VSA	Very Special Arts <i>National organization that works to integrate the arts into the lives of people with disabilities</i>
WESTAF	Western States Arts Federation <i>Regional arts organization serving the 12 western states and Hawaii</i>

MONTANA ARTS COUNCIL MEMBERS

1967-Current

Cynthia Andrus, **Chairman**
Henry Badt
Maxine Blackmer, **Chairman**
Karen Bohlinger
Charles Bolen
Ceridwen Breen
Carol Brenden
* "Bo" F. H. Brown
Frances (Scottie) Byerly
Robert Cavanaugh
Sean Chandler
Corwin Clairmont
Connie Clarke
Shirley Cleary
Ann Cogswell
James M. Colla
Beth Collier
* Mary Cordingley
Tom Cordingley
Robert Crebo
Mary Crippen
Earl Dahlstrom
Ronald Danko
Marshall Friedman
Diane Klein
Emily Day
Kitty Belle Deernose
Kathy Doeden
Monte Dolack
Leslie Drew
Lorilee M. Driscoll
John Dudis
Robert E. Fehlberg
Bill Frazier, **Chairman**
JP Gabriel
* Sumner Gerard
Alan Goddard

Bozeman
Hamilton
Missoula (deceased)
Helena
Missoula
Hamilton (deceased)
Scobey
Missoula
Lewistown
Kalispell
Harlem
Pablo
Miles City/Billings
Helena
Great Falls
Great Falls
Shelby
Great Falls
Helena
Helena
Billings
Moore
Kalispell
Whitefish
Kalispell
Wolf Point
Crow Agency
Miles City
Missoula
Bozeman
Butte
Kalispell
Billings
Big Timber
Bozeman
Billings
Missoula

Mrs. William Graham	Great Falls
Rick Halmes	Billings
Shirley Hanson	Havre
Mary Hauf	Billings
* Jim Haughey	Billings
Lawrence Hayes	Helena
Dee Heltne	Havre
Betti Hill	Helena
Jack Hines	Big Timber
Peggy Hodge	Seattle
Sonia Hoffman	Helena
Tim Holmes	Helena
George Horse Capture	Hayes
*Howard Hunke	Sidney
*Herb Jacobson	Helena
Claudette Johnson-Morton	Dillon
John Johnson	Glendive
Sody Jones	Billings
* Blanche Judge	Helena
* Michael Kennedy	Helena
Bebe Kezar	Whitefish
Kari Lee Kneirim	Glasgow
James Kriley	Missoula
Mark Kuipers	Missoula
Neal Lewing	Polson
Tracy Linder	Molt
Eleanor Logan	Great Falls
James Logan	Great Falls
James Lucas	Miles City
Mrs. George Lund	Reserve
Stan Lynde	Helena
Jerald Metcalf	Helena
Helen Guthrie Miller	Butte
Skulason Moe	Poplar
Lynne Montague	Billings
* Wayne Montgomery	Lima
James Morrison	Havre
Robert Morrison	Billings
Joseph Munzenrider	Helena
*Van Kirke Nelson	Kalispell

Dorothy Nelstead
Rick Newby
Jack Nickels, Jr.
Carol Novotne
Howard Obenhoff
Randall Ogle
Marilyn Olson
Ellen Ornitz
Arlene Parisot
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George Perkins
Larry Pirnie
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Jason "Jay" Pyette
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*Colin Raff
Kevin Red Star
Linda E. Reed
Richard Reinholtz
* Harold Rose, **Chairman**
* Joseph Sample
Miriam Sample
* S. John Schile
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David Shaner
Allen Secher
Jennifer Earle Seifert
Janice Snow
Jean Steele
* Ben Stein
Youpa Stein
Jessica Stickney
Preston Stiffarm
Helen Strange
Sue Talbot, **Chairman**
Roberta Taylor
Marian Thielman
Charles (Chuck) Tooley
JoAnne Troxel

Miles City
Helena
Fort Peck
Fort Harrison
Butte
Kalispell
Sidney
Manhattan
Helena
Browning
Havre
Billings
Missoula
Billings
Havre
Kalispell
Butte
Roberts
Helena
Missoula
Bozeman
Billings
Billings
Missoula
Miles City
Bigfork
Whitefish
Troy
Missoula
Hamilton
Livingston
Arlee
Miles City
Harlem
Stevensville
Missoula
Butte
Chester
Billings
Bozeman

Mark Tyers
Judy Ulrich
Carolyn Valacich
Jane Waggoner Deschner
Alfred Weber
Jim Whitlock
Larry D. Williams, **Chairman**
Wilbur Wood
William Yellowtail
Patrick Zentz

Bozeman
Dillon
Great Falls
Billings
Helena
Hamilton
Great Falls
Roundup
Wyola
Laurel

* 1967 Founding Members of the Council not appointed by a governor.

MONTANA Code Annotated 2005: Rules of Conduct

2-2-104. Rules of conduct for public officers, legislators, and public employees.

- 1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:
 - a. disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or
 - b. accept a gift of substantial value or a substantial economic benefit tantamount to a gift:
 - i. that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or
 - ii. that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.
- 2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.
- 3)
 - a. Except as provided in subsection
 - b. a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:
 - i. the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or
 - the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.
 - c. Subsection (3)(a) does not prohibit:
 - i. a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or
 - ii. a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.
 - d. In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704; amd. Sec. 3, Ch. 562, L. 1995; amd. Sec. 1, Ch. 243, L. 1997.

State Ethics Policy

Policy Number

03-0180

Effective Date

January 31, 2011

Last Revised

January 31, 2011

Issuing Authority

Department of Administration, State Human Resources Division

I. Purpose

State of Montana employees will carry out their duties for the benefit of the people of the state. Two main principles apply to conduct: public trust and public duty. Public employment is a public trust created when the public places its confidence in the integrity of public employees.

Each state agency must adopt this model policy. State agencies may expand upon this policy with additional provisions appropriate to the specific circumstances of the agency (2-18-102(4), MCA).

II. Scope

This policy covers all employees in the executive branch except those employed by the Montana university system, the Montana State Fund, the personal staff of elected officials, and any other employees excluded from policy under 2-18-103 and -104, MCA.

Any state law or collective bargaining agreement providing greater protection to the public supersedes this policy.

A person under contract with the state meets the definition of public employee for the purposes of the standards of conduct statutes (2-2-102(7), MCA). Agencies must include contractors in the application of these requirements.

III. Procedures

Employees shall abide by the code of ethics and standards of conduct found in 2-2-101 through 2-2-304, MCA at all times. The statutes must be consulted whenever an issue arises. Employees shall avoid conflicts of interest between public duty and private interests, favoritism, bias, and the appearance of impropriety. Employees are encouraged to discuss or report any potential ethical violations with agency management before the action occurs.

A. Education Requirements

1. The department provides agencies with a pamphlet summarizing the State's standards of conduct. Agency management shall distribute the pamphlet and the agency's ethics policy to all new employees.
2. Agency management shall provide ethics refresher training to agency employees at least every three years. The training must require employees to read and review the standards of conduct pamphlet and the agency's ethics policy. Each employee shall provide a written statement to management acknowledging the employee read the policy and agrees to abide by the policy and statutes.

B. Use of State Equipment and Resources

State employees may not use public time, facilities, equipment, supplies, personnel, or funds for the employee's private business purposes (2-2-121(2)(a), MCA). State employees may not use these state resources to solicit support for or opposition to a political committee, nomination or election of an individual to public office, or the passage of a ballot issue unless the use is authorized by law (2-2-121(3)(a), MCA).

C. Conflicts of Interest

1. State employees may not engage in substantial financial transactions for the employee's private business purposes with a person whom the state employee inspects or supervises in the course of his official duties (2-2-121(2)(b), MCA).
2. State employees may not perform official acts directly and substantially having negative economic impacts on businesses or undertakings in competition with a business or undertaking in which the employee has a significant interest (2-2-105(5), MCA).
3. State employees may not acquire an interest in any business or undertaking the employee has reason to believe may directly and substantially economically benefit from official action the employee's agency is planning (2-2-105(2), MCA).
4. State employees may not perform an official act that will directly and substantially affect the economic benefit of a business or other undertaking in which the employee has a substantial financial interest or is engaged as counsel, consultant, representative or agent (2-2-121(2)(e), MCA).

5. State employees may not participate in a proceeding when an organization of which the employee is an officer or director is: 1) involved in a proceeding before the employing agency and within the scope of the employee's job duties, or 2) attempting to influence a local, state, or federal proceeding in which the employee represents the state (2-2-121(5), MCA).
6. State employees may not lobby on behalf of an organization of which the employee is a member while performing their public employee job duties. State employees may perform charitable fundraising activities as approved by their supervisor or authorized by law (2-2-121(6), MCA).
7. State employees may not, within 12 months following voluntary termination of employment, obtain employment in which the employee will take direct advantage of matters the employee was directly involved with while employed with the state. These matters are defined as rules, other than rules of general application, the employee actively helped to formulate and applications, claims, or contested cases where the employee actively participated in the decision process (2-2-105(3), MCA).
8. State employees may not have a majority interest in any contract made by them in their official capacity or by any agency of which they are employed if they are directly involved with the contract (2-2-201(1), MCA).
9. Former state employees may not, within six months of termination, contract or be employed by someone who contracts with the state involving matters with which the employee was directly involved during their employment with the state. This does not apply to contracts awarded to the low bidder based on a competitive process or to merchandise sold to the highest bidder at public auction. This does not apply to employees if terminated because of a reduction in force (2-2-201(1) and (2), MCA).

D. Confidential Information

State employees may not disclose or use confidential information acquired in the course of official duties to further substantially their personal economic interests (2-2-104(1)(a), MCA).

E. Collecting Fees as Compensation for Official Duties

1. State employees may not collect a fee or other form of compensation for assisting any person in obtaining a contract, claim, license, or economic benefit from the employee's agency (2-2-121(2)(c), MCA).

2. State employees may not assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency (2-2-121(2)(d), MCA).

F. Overlapping Employment and Other Employment

1. State employees may not receive pay for two separate public employment positions that overlap for the hours being compensated. The following exceptions apply:
 - a. the employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the employee is absent, or
 - b. the employee's salary is reduced by the amount received from the other public employer to avoid duplicate compensation for the overlapping hours; or
 - c. the income received is from the use of accrued leave or compensatory time during the period of overlapping employment (2-2-104(3), MCA).
2. Employees may not solicit or accept employment, or engage in negotiations to consider employment, with a person the employee regulates unless the employee provides written notification to the agency. Employees must report in writing such employment activity to their supervisor and the department director prior to engaging in any official duties (2-2-121(2)(f), MCA).

G. Gifts and Offers Intended to Influence Employees' Actions

1. Employees may not accept a substantial gift or economic benefit, generally anything over \$50 in value that would tend to influence employees in the performance of their duties or employees know is a reward for official actions. Economic benefit includes loans with an interest rate substantially below market and compensation for private services at substantially higher than market.
2. Some items are excluded from the definition of gift. These items are listed below:
 - a. any gift that is not used and is either returned or donated to a charitable organization
 - b. food and beverages consumed when participating in a charitable, civic, or community event bearing a relationship to the employee's official capacity
 - c. educational materials directly related to official duties
 - d. an award presentation in recognition of public service
 - e. educational activity that does not place the employee under obligation, serves the public good, and is not lavish or extravagant (2-2-104(1)(b) and (2), MCA; 2-2-102(3), MCA).

H. Policy Violations

1. Employees must disclose potential conflicts of interest to agency management prior to taking any action potentially violating this policy or the law. Agency management may take steps to avoid the conflict of interest from occurring.
2. Any person who believes an employee violated this policy or agency specific rules and standards of conduct may file a complaint with the commissioner of political practices. The complaint procedure with the commissioner of political practices is located in ARM 44.10.601 to .613. The employee shall inform agency management of the alleged violation before filing a complaint with the commissioner.

I. Disclosure Requirements

1. **Nature of Private Interest:** Public employees must disclose the nature of any private interest creating a conflict prior to acting in a manner impinging on public duty. State employees must make the disclosure in writing to the commissioner of political practices. The disclosure must include:

- a. information listing the amount of private interest, if any;
- b. the purpose and duration of the services rendered, if any; and
- c. the compensation received for those services or other information necessary to describe the interest.

If the state employee performs the official act involved, the employee must publicly declare the nature of the conflict for the record prior to performing the act. The declaration must contain the information contained in one, two, and three above.

2. **Overlapping Public Employment:** Employees must disclose overlapping employment in public positions to agency management prior to accepting employment. The Administrative Rules of Montana (44.10.601) require state public employees who receive multiple salaries from multiple public employers for overlapping work hours, to report their employment and salaries to the commissioner of political practices.
3. **Requirements for Agency Directors:** Agency directors must file a business disclosure statement provided by the commissioner of political practices with the Commissioner prior to December 15 of each even-numbered year (2-2-106, MCA).

J. Investigation and Enforcement

1. Agency management shall investigate reported or disclosed information to determine the appropriate administrative action. An appropriate administrative action may include a complaint to the Commissioner when the agency has no authority to prevent or remedy the violation.
2. Employees who violate this policy, the standards of conduct provided in 2-2-102, et al, MCA, or agency specific rules and standards of conduct may be subject to disciplinary action in accordance with the Discipline Policy (ARM 2.21.6501 et. seq.).

IV. Resources

1. The State Human Resources Division publishes *Ethics: Standards of Conduct for State Employees*. The guide is available at <http://hr.mt.gov/hrpp/guides.mcpX>.
2. The division also publishes a *Manager Fact Sheet: Political Activity of Public Officers and Employees*. The fact sheet can be found at <http://hr.mt.gov/content/hrpp/docs/Guides/PoliticalActivityFactSheet>
3. The Professional Development Center Teaches “*Ethical Issues in Public Service*”. <http://pdc.mt.gov/catalogb.mcpX#EthIssue>

In April, 2011, the State Human Resources Division will provide an on-demand training in support of the training requirements contained in section III.A.2.

V. Definitions

All definitions under 2-2-102, MCA apply to this policy. The following definitions also apply.

Business: Includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

Compensation: Any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

Open Meetings

Per State law MCA 2-3-203. All organizations receiving MAC funding must open their meetings to the public. For complete details, please refer to the law above located on the web at: http://leg.mt.gov/bills/mca_toc/2_3_2.htm.

Per State law MCA 2-3-103. Organizations receiving funding at any level from MAC shall develop procedures for permitting and encouraging the public to participate in organization decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final organization action is taken that is of significant interest to the public. The agenda for a meeting, as defined in [2-3-202](#), must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the organization conducting the meeting. However, the organization may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in [2-3-212](#). For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

Appendix A

Laws that Pertain to Montana Arts Council, Cultural Trust & Other Pertinent Laws

- Montana Arts Council
- Cultural Trust
- C&A Committee and their Payments
- Percent for Art
- Sale of Fine Art by Art Dealer
- American Indian Flag Circle Movement
- Traditional Arts and Crafts Account
- Law that Created the Cultural Trust
- Capitol Complex Advisory Council
- Poet Laureate
- Federal VARA Act

LAWS THAT PERTAIN TO THE MONTANA ARTS COUNCIL
Compiled August 2010 from MCA online search

Montana Code Annotated 2009
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TITLE 22. LIBRARIES, ARTS, AND ANTIQUITIES

CHAPTER 2. ARTS

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[Part 1. Montana Arts Council](#)

[Part 2. Montana Folklife Project \(Expired\)](#)

[Part 3. Cultural and Aesthetic Projects](#)

[Part 4. Art for State Buildings](#)

[Part 5. Sale of Fine Art by Art Dealer](#)

[Part 6. American Indian Monument and Tribal Circle of Flags](#)

[Part 7. Traditional Arts and Crafts](#)

Part 1. Montana Arts Council

22-2-101. Montana arts council established. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: En. Sec. 1, Ch. 2, L. 1967; R.C.M. 1947, 82-3601.

22-2-102. Membership of council -- appointment. The Montana arts council consists of 15 members appointed by the governor, by and with the consent of the senate. Insofar as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest.

History: En. Sec. 2, Ch. 2, L. 1967; R.C.M. 1947, 82-3602; amd. Sec. 1, Ch. 385, L. 1989.

22-2-103. Council membership -- tenure -- compensation. The term of office of each member is 5 years. The governor shall designate a presiding officer and a vice presiding officer from the

members of the council to serve in those capacities at the pleasure of the governor. The presiding officer is the chief executive officer of the council. Each vacancy must be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council must be compensated and receive travel expenses as provided for in [2-15-124](#).

History: En. Sec. 3, Ch. 2, L. 1967; amd. Sec. 10, Ch. 51, L. 1974; amd. Sec. 55, Ch. 439, L. 1975; R.C.M. 1947, 82-3603; amd. Sec. 2, Ch. 385, L. 1989; amd. Sec. 352, Ch. 56, L. 2009.

22-2-104. Executive committee. The council may select an executive committee of five members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: En. Sec. 4, Ch. 2, L. 1967; R.C.M. 1947, 82-3604.

22-2-105. Administrative officers and employees -- compensation. The council may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: En. Sec. 5, Ch. 2, L. 1967; amd. Sec. 11, Ch. 51, L. 1974; R.C.M. 1947, 82-3605.

22-2-106. Council duties. The council shall:

- 1) Encourage throughout the state the study and presentation of the arts and stimulate public interest and participation in the arts;
- 2) Cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theater, dance, painting, sculpture, architecture, and allied arts and crafts, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;
- 3) Foster public interest in the cultural heritage of our state and expand the state's cultural resources;
- 4) Encourage and assist freedom of artistic expression essential for the well-being of the arts;
- 5) As required under [2-15-242](#), nominate three individuals to serve as the state poet laureate and provide the list of nominees to the governor.

History: En. Sec. 6, Ch. 2, L. 1967; amd. Sec. 39, Ch. 93, L. 1969; R.C.M. 1947, 82-3606; amd. Sec. 9, Ch. 125, L. 1983; amd. Sec. 2, Ch. 115, L. 2005.

22-2-107. Gifts and donations. The council may acquire, accept, receive, dispose of, and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. Money received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, must be deposited in the state special revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the national endowment for the arts.

History: En. Sec. 7, Ch. 2, L. 1967; amd. Sec. 11, Ch. 3, L. 1977; R.C.M. 1947, 82-3607; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 48, Ch. 2, L. 2009.

22-2-108. Authorization for council to enter certain contracts. The council may contract with individuals, organizations, and institutions for services or cooperative endeavors furthering the objectives of the council's programs.

History: En. Sec. 8, Ch. 2, L. 1967; R.C.M. 1947, 82-3608.

22-2-109. Financing of council. The council may engage in such fundraising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the state special revenue fund of the state treasury and may not be used for any purposes other than the improvement, development, and operation and programs of the council.

History: En. Sec. 9, Ch. 2, L. 1967; R.C.M. 1947, 82-3609; amd. Sec. 1, Ch. 277, L. 1983.

Part 2. Montana Folklife Project (Expired)

Part 3. Cultural and Aesthetic Projects

22-2-301. Cultural and aesthetic projects grants.

- 1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in [15-35-108](#) must submit a grant proposal to the cultural and aesthetic projects advisory committee, in care of the Montana arts council, by August 1 of the year preceding the convening of a regular legislative session.
- 2) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects.

History: En. Sec. 2, Ch. 653, L. 1979; amd. Sec. 1, Ch. 99, L. 1983; Sec. [22-3-112](#), MCA 1981; redes. [22-2-301](#) by Code Commissioner, 1983; amd. Sec. 1, Ch. 587, L. 1991.

22-2-302. Advisory committee -- powers and duties.

- 1) The cultural and aesthetic projects advisory committee provided for in [2-15-1521](#) shall review all proposals for cultural and aesthetic project grants before they are submitted to the legislature.
- 2) Consistent with the rules adopted in accordance with [22-2-303](#), the committee shall make recommendations to the legislature on each proposal submitted to the committee.

- 3) The committee's recommendations to the legislature are advisory only.
- 4) The committee shall present its recommendations to the appropriations committee of the legislature by the 15th day of any regular legislative session.

History: En. Sec. 3, Ch. 99, L. 1983.

22-2-303. Rulemaking authority.

- 1) The Montana historical society and the Montana arts council shall adopt rules that specify the criteria the advisory committee shall use when evaluating and making recommendations on cultural and aesthetic grant proposals submitted to the legislature.
- 2) The Montana arts council shall adopt rules that implement the provisions of [22-2-306](#), [22-2-308](#), and [22-2-309](#), relating to local support, matching requirements, application procedures, and disbursements of grants.

History: En. Sec. 5, Ch. 99, L. 1983; amd. Sec. 4, Ch. 732, L. 1985.

22-2-304. Cultural and aesthetic project appropriations -- administration.

- 1) The legislature must appropriate funds from the income of the trust fund created in [15-35-108](#) for cultural and aesthetic projects before any grant for a cultural or aesthetic project is awarded.
- 2) Costs incurred by the Montana arts council for accounting, correspondence, project visits, and solicitation of proposals related to cultural and aesthetic project grants and the costs of the advisory committee established in [2-15-1521](#) shall be paid from appropriations from the income of the trust fund.
- 3) Grant proposals are heard by a legislative appropriations subcommittee.
- 4) Grant proposals approved by the legislature are administered by the Montana arts council.

History: En. Sec. 4, Ch. 99, L. 1983; amd. Sec. 1, Ch. 13, L. 1985; amd. Sec. 5, Ch. 626, L. 1989; amd. Sec. 2, Ch. 8, Sp. L. January 1992.

22-2-305. Allocation and disbursement of funds.

- 1) The Montana arts council shall allocate and disburse cultural and aesthetic project account funds as appropriated by the legislature.
- 2) If the funds in the cultural and aesthetic projects account are insufficient to fund projects in the amount of the legislative appropriation for the projects, the council shall allocate and disburse the account's funds in accordance with the provisions of the appropriation act.

History: En. Sec. 2, Ch. 688, L. 1983; amd. Sec. 1, Ch. 315, L. 1987.

22-2-306. Grant conditions -- additional funds -- accounts and reports.

- 1) A grant may not be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.
- 2) A grantee must agree in writing that:
 - a. the grantee is the official and sole agency for the administration of the project described in the grant agreement; and
 - b. no person will, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.
- 3) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. All funds granted to the grantee must be spent or encumbered during the grant period.
- 4) Disbursements to grantees must be as follows, based upon the cash flow needs of the projects and the revenues available:
 - a. Projects that are to receive more than \$10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18 months of the biennium, and the balance in the remainder of the biennium. Within the limitations contained in this subsection, the amount of each payment must be determined by the Montana arts council in its discretion. Each payment may be made only after an examination of the costs incurred in the project and the amount, if any, of the unencumbered or unexpended balance of prior grant payments for the project.
 - b. Projects that are to receive \$10,000 or less may receive the total grant in any fiscal quarter if the Montana arts council determines that the cultural and aesthetic project account has funds available and that, after an examination of the costs incurred by the project, total payment is appropriate.
 - c. A grant award budget may be modified in accordance with this subsection. A grantee may modify line items in an approved budget in an amount not to exceed 10% of the total grant award. A grantee may, with permission of the Montana arts council, modify line items in an approved budget in an amount not to exceed 20% of the total grant award. A modification may not increase the grant award or change the scope or purpose of the award.
- 5) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.
- 6) Grantees must submit to the council semiannual reports of expenditures during the course of the project and other financial and descriptive reports that the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council. With regard to

grantees who in the past have submitted late reports, 30% of the grant award may be held pending receipt of final reports by the council.

- 7) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant.

History: En. Sec. 1, Ch. 688, L. 1983; amd. Sec. 3, Ch. 732, L. 1985; amd. Sec. 2, Ch. 315, L. 1987; amd. Sec. 1, Ch. 656, L. 1989.

22-2-307. Renumbered . [22-2-321](#), Code Commissioner, 1985.

22-2-321. Reversion of granted funds. At the end of a grant period, any unexpended balance of the grant shall revert to the cultural and aesthetic projects account provided for in [15-35-108](#).

History: En. Sec. 3, Ch. 688, L. 1983; Sec. [22-2-307](#), MCA 1983; redes. [22-2-321](#) by Code Commissioner, 1985.

22-2-308. Application procedure -- grant criteria.

- 1) A grant for a facility owned and operated by a county or municipality must require financial support for the facility from the county or municipality. A grant for a facility owned by a county or municipality but operated by a nonprofit organization is expected to have financial support from the county or municipality, but must have, at a minimum, in-kind support for the facility from the county or municipality. The grant application form, which must be prescribed by the Montana arts council, must request specific information about the level of local support for the project and the facility.
- 2) An applicant for a historic preservation project shall cooperate with the state historic preservation office. A letter from the state historic preservation office, stating any agreements reached with the applicant, must be received by the Montana arts council before the grant funds may be released.

History: En. Sec. 1, Ch. 732, L. 1985; amd. Sec. 2, Ch. 587, L. 1991; amd. Sec. 1, Ch. 479, L. 1993.

22-2-309. Grant categories.

- 1) The following categories are established for grant funds:
 - a. special projects which are specific cultural and aesthetic activities, services, or events of limited duration;
 - b. operational support for cultural institutions that have been in existence for at least 2 years and whose budgets reflect only the cost of continuing their current program;
 - c. capital expenditures for acquisition, construction, or renovation of facilities; and
 - d. challenge grants for permanent endowments to benefit cultural nonprofit grant recipients.

- 2) The Montana arts council may require a match in cash or donated services for special project and operational support grants. There is a presumption that the match must represent \$1 in value for each dollar of the grant. The Montana arts council may accept matches in excess of the presumed value or may in its discretion require a lesser amount.
- 3) Capital expenditures may not exceed 25% of the total grant funds appropriated. Capital expenditure grants require a match of at least \$3 in cash or donated goods and services, which goods and services must be donated specifically for the capital expenditure project, to receive each dollar of grant funds.
- 4) Challenge grants require a match of at least \$3 in cash or irrevocable planned or deferred gifts to receive each dollar of grant funds. Challenge grants are available upon meeting the specified match. Not less than one-third of the specified match must be in cash. Not more than one-third of the match may be in wills, devises, bequests, and paid-up life insurance policies. A devise may include retention of an irrevocable life estate by the donor.

History: En. Sec. 2, Ch. 732, L. 1985; amd. Sec. 3, Ch. 315, L. 1987; amd. Sec. 2, Ch. 656, L. 1989.

22-2-310 through 22-2-320 reserved.

22-2-321. Reversion of granted funds. At the end of a grant period, any unexpended balance of the grant shall revert to the cultural and aesthetic projects account provided for in [15-35-108](#).

History: En. Sec. 3, Ch. 688, L. 1983; Sec. [22-2-307](#), MCA 1983; redes. [22-2-321](#) by Code Commissioner, 1985.

Law establishing C&A Committee and their payments cited above:

2-15-1521. Cultural and aesthetic projects advisory committee.

- 1) There is a cultural and aesthetic projects advisory committee.
- 2) The committee consists of 16 members, appointed as follows:
 - a. eight members appointed by the Montana historical society board of trustees; and
 - b. eight members appointed by the Montana arts council.
- 3) Members serve terms of 4 years beginning January 1 following their appointment.
- 4) A member may be removed by the appointing authority.
- 5) All vacancies must be filled by the original appointing authority.
- 6) The committee shall elect a presiding officer and a vice presiding officer.
- 7) Members of the committee are entitled to compensation of \$25 a day and travel expenses, as provided for in [2-18-501](#) through [2-18-503](#), for each day in attendance at a committee meeting.

2-18-502. Computation of meal allowance.

- 1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in [2-18-501](#), only if the employee is in a travel status for more than 3 continuous hours during the following hours:
 - a. for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;
 - b. for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and
 - c. for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.
- 2) An eligible employee may receive:
 - a. only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift; or
 - b. a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.
- 3) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.
- 4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual's residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.
- 5) The department of administration shall prescribe policies necessary to effectively administer this section for state government.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974; amd. Sec. 2, Ch. 439, L. 1975; amd. Sec. 2, Ch. 483, L. 1977; R.C.M. 1947, 59-539; amd. Sec. 1, Ch. 123, L. 1983; amd. Sec. 2, Ch. 439, L. 1997.

2-18-503. Mileage -- allowance.

- 1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.
- 2)
 - a. When a state officer or employee is authorized to travel by motor vehicle and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.
 - b. When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-

owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

- 3) Members of the legislature, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.
- 4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.
- 5) This section does not alter [5-2-301](#).
- 6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R.C.M. 1921; amd. Sec. 1, Ch. 16, L. 1933; re-en. Sec. 4884, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973; amd. Sec. 9, Ch. 355, L. 1974; amd. Sec. 3, Ch. 439, L. 1975; amd. Sec. 1, Ch. 532, L. 1975; amd. Sec. 1, Ch. 453, L. 1977; R.C.M. 1947, 59-801; amd. Sec. 1, Ch. 622, L. 1979; amd. Sec. 3, Ch. 439, L. 1997; amd. Sec. 8, Ch. 558, L. 1999; amd. Sec. 1, Ch. 4, Sp. L. August 2002; amd. Sec. 1, Ch. 112, L. 2005; amd. Sec. 1, Ch. 40, L. 2007.

Part 4. Art for State Buildings

22-2-401. Short title. This part may be cited as the "Percent-for-Art Act".

History: En. Sec. 1, Ch. 552, L. 1983.

22-2-402. Purpose. The state of Montana, in recognition of its responsibility to create a more humane environment of distinction, enjoyment, and pride for all its citizens and in recognition that public art is a resource that stimulates the vitality and economy of the state's communities and provides opportunity for artists and other skilled workers to practice their crafts, declares that a portion of the funds for the construction or renovation of appropriate state buildings be allocated for the acquisition of works of art for such buildings.

History: En. Sec. 2, Ch. 552, L. 1983.

22-2-403. Definitions.

- 1) As used in this part, the following definitions apply:
- 2)
 - a. "Artist" means a practitioner in the visual arts generally recognized by the practitioner's peers or critics as a professional who produces works of art.
 - b. The term does not include the project architect, or any member of the architect's firm, of a new state building that is to have works of art under the provisions of this part.
- 3) "New state building" means any structure to be built, remodeled, or renovated with money appropriated by the legislature that is, in the opinion of the architecture and engineering division of the department of administration, appropriate for the inclusion of works of art.
- 4)
 - a. "Work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching, lithograph, offset print, or silk screen), craft (including crafts in clay, textile, fiber, wood, metal, plastic, or glass), or mixed media (including a collage, assemblage, or any combination of art media).
 - b. The term does not include environmental landscaping.

History: En. Sec. 3, Ch. 552, L. 1983; amd. Sec. 353, Ch. 56, L. 2009.

22-2-404. Art for new state buildings -- finance.

- 1) Subject to legislative allocations as provided in subsection
- 2) all capital project appropriations by the legislature shall include, as a part of the appropriation, an amount not to exceed 1% of the amount appropriated for the use of the Montana arts council for the acquisition of works of art for new state buildings, maintenance of works of art, and administration of this part as provided in subsection (3).
 - a. If a state building recommended for construction in the report required by Title 17, chapter 7, part 2, is also recommended as appropriate for the inclusion of works of art as provided in [22-2-403\(2\)](#), the report shall so state, and in addition the report shall include any recommendation made by the Montana arts council concerning the appropriateness of the building for the inclusion of works of art, the types of works of art suggested for inclusion in such building, and the anticipated cost of such suggested works of art, including costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art. The Montana arts council may submit a recommendation even if the architecture and engineering division of the department of administration has determined that a structure is not appropriate for inclusion of works of art.
 - b. The legislature may, for those buildings recommended as appropriate for the inclusion of works of art, allocate an amount not to exceed 1% of the appropriated cost for use as specified in subsection (1).

- c. Additional funds, including separate appropriations, donations, grants, and other available governmental funds, may be used for the acquisition of works of art for new state buildings.
- 3)
- a. One percent of the funds received from the maximum appropriation setoff allocated by the legislature must be granted to the Montana arts council for the maintenance of art in state buildings.
 - b. The administration of this part may be funded out of the appropriation setoff allocated by the legislature.

History: En. Sec. 4, Ch. 552, L. 1983.

22-2-405. Display of works of art. The works of art acquired under the provisions of this part may be an integral part of or attached to the new state building or may be displayed on the parcel of land on which the new state building is located. The works of art must be so located that they are in public view.

History: En. Sec. 5, Ch. 552, L. 1983.

22-2-406. Administration -- selection of works of art.

- 1) The Montana arts council is primarily responsible for the administration of this part. The council shall:
 - a. submit its recommendations to the architecture and engineering division of the department of administration for inclusion in the report required by Title 17, chapter 7, part 2, concerning the appropriateness of any building for the inclusion of works of art, a description of the types of works of art suggested for inclusion in the building, and the anticipated costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art;
 - b. Appoint a three-member screening committee for each new state building to recommend artists to be commissioned or completed works of art to be purchased. The committee consists of the project architect or the architect's designee, a professional artist, and a representative from the user agency who is a resident of the community in which the new state building is to be constructed.
 - c. select, commission the artist for, review the design, execution, and placement of, and finally accept all works of art. The Montana arts council shall consult with the screening committee in fulfilling the requirements of this subsection (1)(c).
 - d. assist in contract negotiations with artists who are selected;
 - e. ensure that works of art acquired for display under the provisions of this part are displayed in a manner that they are in public view;
 - f. ensure that each work of art is properly maintained and may use the funds provided for in [22-2-404](#) or any other funds available for maintenance; and
 - g. maintain a close working relationship with the artist throughout each project.
- 2) A payment may not be made to any artist for works of art under this part without prior authorization of the Montana arts council.

History: En. Sec. 6, Ch. 552, L. 1983; amd. Sec. 354, Ch. 56, L. 2009.

22-2-407. State ownership of work of art. The state must obtain sole ownership of each work of art acquired for display under this part, including all tangible rights and privileges, subject to the artist's right to claim authorship of the work of art.

History: En. Sec. 7, Ch. 552, L. 1983.

22-2-408. Part not exclusive. The provisions of this part are not the exclusive manner of acquiring and displaying works of art in public buildings.

History: En. Sec. 8, Ch. 552, L. 1983.

Part 5. Sale of Fine Art by Art Dealer

22-2-501. Definitions.

As used in this part, unless the context requires otherwise, the following definitions apply:

- 1) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.
- 2) "Artist" means a person who creates a work of fine art or, if the person is deceased, the person's heir, devisee, or personal representative.
- 3) "Consignment" means that no title to, estate in, or right to possession of fine art superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such fine art.
- 4) "Fine art" means a painting, sculpture, drawing, work of graphic art (including an etching, lithograph, signed limited edition offset print, silk screen, or a work of graphic art of like nature), a work of calligraphy, photographs, original works in ceramics, wood, metals, glass, plastic, wax, stone, or leather, or a work in mixed media (including a collage, assemblage, or any combination of the art media mentioned in this subsection).
- 5) "Person" means an individual, partnership, corporation, association, or other group, however organized.

History: En. Sec. 1, Ch. 534, L. 1985.

22-2-502. Artist-art dealer relationship. Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition and sale on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of fine art by the dealer constitutes a consignment, unless the delivery to the art dealer is pursuant to

an outright sale for which the artist receives upon delivery or has received prior to delivery full compensation for the work of fine art.

History: En. Sec. 2, Ch. 534, L. 1985.

22-2-503. Agency relationship -- trust property.

A consignment of a work of fine art results in the following:

- 1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art.
- 2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.
- 3) The consignee is responsible for the loss of or damage to the work of fine art while in the possession of or on the premises of the consignee.
- 4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

History: En. Sec. 3, Ch. 534, L. 1985.

22-2-503. Agency relationship -- trust property.

A consignment of a work of fine art results in the following:

- 1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art.
- 2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.
- 3) The consignee is responsible for the loss of or damage to the work of fine art while in the possession of or on the premises of the consignee.
- 4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

History: En. Sec. 3, Ch. 534, L. 1985.

22-2-505. Waiver void -- exemption from U.C.C.

- 1) Any provision of a contract or agreement by which the consignor waives any provision of this part is void.
- 2) This part is not subject to the provisions of Title 30, chapters 1 through 9A.

History: En. Sec. 5, Ch. 534, L. 1985.

LAW THAT EXEMPTS PUBLIC ART FROM STATE PURCHASING BID REQUIREMENTS

MCA 18-4-132. Application.

(1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000;

(e) contracts entered into by the state compensation insurance fund to procure insurance-related services;

(f) employment of:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(iv) consulting actuaries;

(v) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(vi) a private consultant employed by the Montana state lottery;

(vii) a private investigator licensed by any jurisdiction;

- (viii) a claims adjuster; or
- (ix) a court reporter appointed as an independent contractor under [3-5-601](#);
- (g) electrical energy purchase contracts by the university of Montana or Montana state university, as defined in [20-25-201](#). Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.
- (h) the purchase or commission of art for a museum or public display;**
- (i) contracting under [47-1-216](#) of the Montana Public Defender Act; or
- (j) contracting under Title 90, chapter 4, part 11.
- (4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:
 - (i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;
 - (ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and
 - (iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.
- (b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).
- (5) As used in this section, the following definitions apply:
 - (a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.
 - (b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or manufactured.

History: En. Sec. 44, Ch. 519, L. 1983; amd. Sec. 1, Ch. 548, L. 1989; amd. Sec. 2, Ch. 359, L. 1995; amd. Sec. 5, Ch. 443, L. 1997; amd. Sec. 1, Ch. 407, L. 1999; amd. Sec. 1, Ch. 580, L. 1999; amd. Sec. 30, Ch. 7, L. 2001; amd. Sec. 15, Ch. 181, L. 2001; amd. Sec. 1, Ch. 153, L. 2003; amd. Sec. 2, Ch. 289, L. 2005; amd. Sec. 22, Ch. 449, L. 2005; amd. Sec. 1, Ch. 146, L. 2007; amd. Sec. 3, Ch. 439, L. 2009.

Part 6. American Indian Monument and Tribal Circle of Flags

22-2-601. (Temporary) American Indian monument and tribal flag circle -- competition for design.

- 1) The state of Montana shall erect on the grounds of the capitol complex a monument to American Indians and a Montana tribal flag circle in recognition of American Indians' contributions to this state and nation.
- 2) The Montana arts council shall advertise and conduct a competition among all Montanans for a design for the monument and flag circle. (Effective on occurrence of contingency)

22-2-601. (Effective on occurrence of contingency) . American Indian monument and tribal flag circle -- competition for design.

- 1) The state of Montana shall erect on the grounds of the capitol complex a monument to American Indians and a Montana tribal flag circle in recognition of American Indians' contributions to this state and nation, including specific recognition of the contributions and sacrifices made by Montana's past, present, and future American Indian war veterans.
- 2) The Montana arts council shall advertise and conduct a competition among all Montanans for a design for the monument and flag circle.

History: En. Sec. 1, Ch. 755, L. 1991; amd. Sec. 1, Ch. 569, L. 2003.

22-2-602. Advisory committee -- composition -- duties.

- 1) To coordinate the project provided for in [22-2-601](#), the governor shall appoint an advisory committee composed of the following 11 members:
 - a. a representative from the Montana arts council;
 - b. a representative from each of the state's seven Indian reservations;
 - c. a representative from the architecture and engineering division of the department of administration;
 - d. the state director of Indian affairs or the state director's designee; and
 - e. a representative of the Montana historical society.
- 2) The advisory committee shall review the proposals submitted in the design competition for the monument and flag circle and select an appropriate design.
- 3) The advisory committee shall make recommendations to the department of administration for an appropriate site for the monument and the flag circle on the grounds of the capitol complex. The monument and flag circle may be located separately on the grounds.
- 4) The advisory committee shall solicit and accept private contributions to finance the monument and the placement of the monument and the flag circle on the grounds of the capitol complex.

History: En. Sec. 2, Ch. 755, L. 1991; amd. Sec. 6, Ch. 164, L. 2009.

Part 7. Traditional Arts and Crafts Account

22-2-701. Traditional arts and crafts account -- funding -- use.

- 1) There is an account in the state special revenue fund established in [17-2-102](#) for the purchase and sale of traditional arts and crafts by American Indian master artists. Money may be deposited in the account through an allocation of money to the account or as provided in this section.
- 2) Money in the account may be used only by the Montana arts council to purchase traditional arts and crafts by American Indian master artists and to make the arts and crafts available for

resale. Money generated through the sale of traditional arts and crafts must be deposited into the account.

History: En. Sec. 1, Ch. 289, L. 2007.

Fund established for 22-7-701:

17-2-102. Fund structure. For the purpose of ensuring strict accountability for all revenue received and spent, there are in the state treasury only the following fund categories and types:

- 1) the governmental fund category, which includes:
 - a. the general fund, which accounts for all financial resources except those required to be accounted for in another fund;
 - b. the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than private purpose trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:
 - i. The state special revenue fund consists of money and other proceeds from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money and other proceeds from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.
 - ii. The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.
 - c. the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds;
 - d. the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest; and
 - e. the permanent fund type, which accounts for financial resources that are legally restricted to the extent that only earnings, but not principal, may be used;
- 2) the proprietary fund category, which includes:
 - a. the enterprise fund type, which accounts for operations:
 - i. that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or
 - ii. whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital

- b. the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;
- 3) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:
 - a. private purpose trust fund type;
 - b. investment trust fund type;
 - c. pension and other employee benefit trust fund type; and
 - d. agency fund type.
- 4) the higher education funds, which include:
 - a. the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:
 - i. The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.
 - ii. The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.
 - iii. The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds, identifies financial activities related to special organized activities of educational departments in which the activity is fully supported by supplemental assessments, and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.
 - iv. The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff in which a fee that is directly related to but does not necessarily equal the cost of the service provided is charged to the consumer.
 - b. the student loan fund, which accounts for money deposited in the state treasury that may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;
 - c. the endowment fund, which accounts for money deposited in the state treasury by the Montana university system in which the principal portion of the amount received is nonexpendable but is available for investment. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

- d. the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system under an agreement by which the money is made available on the condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;
- e. the plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and
- f. the agency fund, which accounts for money deposited in the state treasury for which the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

History: En. Sec. 2, Ch. 147, L. 1963; amd. Sec. 1, Ch. 321, L. 1973; amd. Sec. 1, Ch. 438, L. 1977; R.C.M. 1947, 79-410; amd. Sec. 2, Ch. 540, L. 1979; amd. Sec. 2, Ch. 28, L. 1981; amd. Sec. 9, Ch. 281, L. 1983; amd. Sec. 1, Ch. 136, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 700, L. 1989; amd. Sec. 2, Ch. 433, L. 1993; amd. Sec. 4, Ch. 308, L. 1995; amd. Sec. 7, Ch. 532, L. 1997; amd. Sec. 1, Ch. 291, L. 1999; amd. Sec. 6, Ch. 34, L. 2001; amd. Sec. 2, Ch. 305, L. 2001.

LAW THAT CREATED THE CULTURAL TRUST

15-35-108. (Temporary) Disposal of severance taxes.

Severance taxes collected under this chapter must, in accordance with the provisions of [17-2-124](#), be allocated as follows:

- 1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under [17-6-203](#)(6) and invested by the board of investments as provided by law.
- 2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in [17-7-205](#).
- 3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.
- 4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in [23-1-102](#).
- 5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.
- 6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.
- 7) The amount of [5.8% through September 30, 2013, and beginning October 1, 2013, the amount of] 2.9% must be credited to the coal natural resource account established in [90-6-1001](#)(2).
- 8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in [82-4-244](#).
- 9)
 - a. Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.
 - b. The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in [17-7-502](#), on an annual basis as follows:
 - i. \$65,000 to the cooperative development center;
 - ii. \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

- iii. \$3.65 million to the research and commercialization state special revenue account created in [90-3-1002](#);
- iv. to the department of commerce:
 - 1. \$125,000 for a small business development center;
 - 2. \$50,000 for a small business innovative research program;
 - 3. \$425,000 for certified regional development corporations;
 - 4. \$200,000 for the Montana manufacturing extension center at Montanastate university-Bozeman; and
 - 5. \$300,000 for export trade enhancement. (*Effective July 1, 2010*)

CAPITOL COMPLEX ADVISORY COUNCIL ON WHICH ARTS COUNCIL HAS A MEMBER

2-17-803. Capitol complex advisory council established -- membership -- staff services -- compensation.

- 1. There is a capitol complex advisory council.
- 2. The council consists of nine members as follows:
 - a. two members of the house of representatives appointed by the speaker on a bipartisan basis;
 - b. two members of the senate appointed by the committee on committees on a bipartisan basis;
 - c. a public representative appointed by the governor; and
 - d. the director or the director's designee of each of the following agencies:
 - i. the Montana historical society established in [22-3-101](#);
 - ii. the Montana arts council established in [2-15-1513](#);
 - iii. the department of administration established in [2-15-1001](#); and
 - iv. the department of fish, wildlife, and parks established in [2-15-3401](#).
- 3. The council shall select a presiding officer, who may call meetings to conduct council business. The department of administration shall provide staff services to the council.
- 4.
 - a. The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the daily allowance provided for in [5-2-301](#)(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in [2-18-501](#) through [2-18-503](#).
 - b. A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.
 - c. A council member appointed under subsection (2)(a) or (2)(b) is entitled to compensation and expenses as provided in [5-2-302](#).

History: En. Sec. 3, Ch. 476, L. 1997; amd. Sec. 5, Ch. 51, L. 1999; amd. Sec. 1, Ch. 56, L. 2003; amd. Sec. 1, Ch. 321, L. 2005.

The code section referred to above for the Montana Arts Council:

2-15-1513. Montana arts council.

1. There is a Montana arts council which is created in Title 22, chapter 2.
2. The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.

History: En. 82A-508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 51, L. 1974; R.C.M. 1947, 82A-508.

POET LAUREATE LAW:

2-15-242. State poet laureate.

1. There is a state poet laureate.
2. Within 30 days prior to the expiration of the state poet laureate's term of appointment or within 30 days after a vacancy in the position occurs, the Montana arts council established in [22-2-101](#) shall nominate three individuals to be the state poet laureate. The Montana arts council shall provide the list of nominees to the governor who shall:
 - a. within 30 days after receiving the list of nominees, appoint the state poet laureate from among the individuals named on the list; and
 - b. notify the secretary of state and the Montana arts council of the appointment.
3. The individual named by the governor as the state poet laureate shall serve for a term of 2 years beginning on the date of appointment by the governor.
4. The state poet laureate is an honorary position, and the person serving as the state poet laureate may not receive any compensation from the state for serving as the state poet laureate.

History: En. Sec. 1, Ch. 115, L. 2005.

AGENCY ATTACHED TO THE STATE BOARD OF EDUCATION LAW:

2-15-1511. Agencies allocated to state board of education. The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and coordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, the Montana arts council, and the state library commission.

History: En. 82A-501.1 by Sec. 5, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.1.

HERITAGE AND CULTURAL TOURISM PLAN

90-1-164. Heritage and cultural tourism promotion and development plan.

1. A heritage preservation and cultural tourism commission may prepare a heritage and cultural tourism promotion and development plan and shall operate according to the provisions of that plan.
2. A heritage and cultural tourism promotion and development plan must be created in consultation with the tourism advisory council, the Montana historical society, the Montana arts council, and interested stakeholders, including businesses and institutions that have a demonstrable interest in cultural tourism, historic preservation, economic development, the arts, and cultural affairs.
3. A heritage and cultural tourism promotion and development plan:
 - a. may include but is not limited to:
 - i. inventories of public displays and interpretations of heritage and cultural tourism resources;
 - ii. mapping of and guidance to heritage and cultural tourism resources; and
 - iii. advertising and promoting heritage and cultural tourism resources, economic development, heritage protection, and heritage incentives; and
 - b. may recommend ordinances or resolutions to counties, consolidated governments, and municipalities to assist and protect the qualities of heritage and cultural tourism resources as long as those ordinances are based on uniform standards and procedures.

History: En. Sec. 8, Ch. 217, L. 2007.

End of Document for Laws that include the Montana Arts Council

THE VISUAL ARTISTS RIGHTS ACT OF 1990:

Bill Frazier © 2016

This article is prepared at the request of Arni Fishbaugh, Executive Director of the Montana Arts Council, for the benefit of Montana's artists with work of visual art on public display. This law, commonly referred to as VARA, appears in Title 17 USCA §106A, which is the copyright portion of the United States Code. It was passed by Congress to amend the copyright law and add additional protections for a limited category of visual artists.

This law has been both inconsistently interpreted and inconsistently enforced, with the result that it is not well understood by the art community. In fact, I would venture to say that it is not well understood by anyone! It is not absolute and its provisions can be waived by the artist. It applies only to visual artists, for example, painters, sculptors, photographers and print makers, with limited editions of 200 or less, all of which work is designed for public display. It applies only to living artists and to work produced after June 1, 1990, for public exhibition or display. The Act is very limited in scope and arguably would not apply to most artists or art work.

It is questionable whether it would apply to typical consigned art work in commercial galleries, or work prepared for sale through the variety of auctions proliferating throughout the art world.

VARA is designed to enhance the artist's protection for work which is on public display, for example murals on the side of buildings, statues or other sculpture in a city park or other such location, work in public buildings and sculpture parks, subject to a number of conditions. One of the most significant conditions is that the artist can waive the protections of this law by signing a waiver provision in the commissioning contract with a public agency or other organization or building owner. Be careful what you sign, and if these protections are important to you, be sure that you are not waiving them. The protection lasts for the life of the artist only. Although it is a part of the copyright law, it does not extend additional protection as does a regular copyright for the life of the artist plus 70 years.

As to what work is actually protected, there are inconsistencies, but here is what the law is intended to protect, what is often called artists' moral rights:

ATTRIBUTION:

The right to claim authorship or work created by the artist;

The right to prevent the artist's name from being associated with work he did not create;

The artist's right to prevent his own work from being attributed to him if it has been modified in such a way as to damage his artistic or professional reputation or honor.

INTEGRITY:

The right to prevent the intentional modification of the work if it would adversely affect one's reputation;

The right to prevent any intentional destruction or damage to the work if it is of "recognized stature." This would be work that the arts community, art experts or society in general considers to be significant. A court cannot make this determination by itself. This does not include damage due to the elements outside in a park, for example, or passage of time. There seems to be some debate as to whether the owner, city park for

instance, has an affirmative obligation to maintain the art work in good condition, however.

Violation of the above proscriptions may get museums, galleries and collectors in trouble if they display an artist's work in a manner inconsistent with the artist's intentions or design. This may happen where the work is a multiple piece installation or a single piece consisting of several parts or elements, and the museum or other owner displays it in different pieces or separates the parts, as in a triptych. Another example would be where the artist designs a work of public art for a specific location and the city or other owner, without good reason, moves it to another location without the artist's consent. Each situation is unique and there have been very few cases and interpretations of the law.

VARA applies to cities, counties, states and governmental agencies as well as to private landowners. An example, known to many Montana sculptors, occurred in one of our larger cities whereby the city through a local agency attempted to organize a sculpture park. Sculptors installed work at the request of the agency, damage occurred through either vandalism or negligence of the agency, the artists requested the agreed upon insurance coverage, coverage was denied, and the agency and city refused to assist in repair of the damaged work. Very shabby!

In the above Montana example, I believe this was a violation of the VARA. All of the work would have passed the "significant stature" threshold, the work was damaged while on display in a public venue, and, while not a requirement of VARA, the promised and contracted for, insurance coverage was never provided.

In the case of a mural, or installed work in a building, there is VARA protection if the work can be removed without damage or alteration. The building owner must give the artist a 90 day notice to remove. If the artist either fails to respond or remove the work, he waives the VARA protections. If the artist does remove, or intend to remove, the work, many variables come into play, again bringing up the inconsistencies I mentioned earlier in this article.

Only the artist can claim protection under VARA. It does not apply to his estate, and the artist's VARA rights cannot be assigned or transferred to another. An owner, such as a city or museum, cannot claim the protections under the act, so the benefits are limited.

If an artist installs work on another's property without permission, the VARA does not apply. For example, if an artist installed work in the city park without the permission of the city, and the city later removed the item, the artist would have no recourse. In contrast, once a city or other entity accepts a public art work, the VARA protections apply.

Violations of VARA can generate substantial monetary penalties, the possibility of restraining orders, legal fees and court costs, including statutory damages up to \$150,000.00.

The extent to which VARA applies to work in private collections and offered for sale in commercial galleries is unclear. Again there are many conditions and uncertain application and enforcement. If you or an organization under your care owns or controls art work designed for public display, you should familiarize yourself with the provisions of VARA and consider how it might apply to your situation. I would encourage museums, cities and other public and governmental entities with art work on public display, owned or on loan, to insure that they have insurance coverage for potential VARA violations.

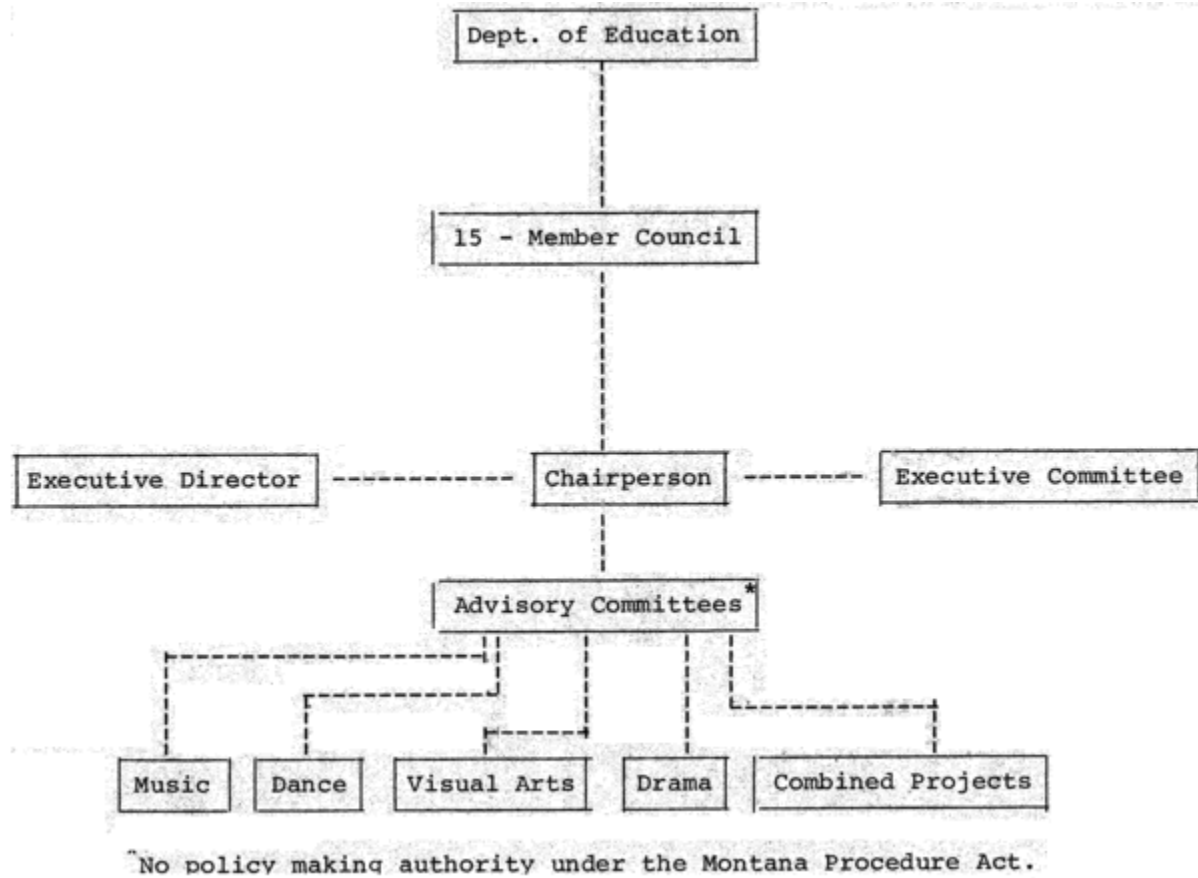
Appendix B

State of Montana Administrative Rules: Montana Arts Council Administrative Rules

10.111.101 ORGANIZATIONAL RULE

1. The Montana Arts Council was established by the statutes contained in Sec. [22-2-101](#) MCA. Sec. [2-15-1513](#) MCA transfers the Council to the Department of Education for administrative purposes. The Montana Arts Council encourages throughout the state the study and presentation of the arts. It endeavors to stimulate public interest and participation in arts activities and to cooperate with public and private institutions engaged within the state in artistic and cultural activities. Many of its objectives are reached through a program of grants in the areas of technical assistance, broadbased assistance to arts organizations, assistance in touring of art resources, special project assistance, and pilot project development. More than three-quarters of the administrative staff's operations deal with application for and distribution of federal funds on behalf of arts organizations throughout the state. The remainder is concerned with informational and technical services rendered to individuals and organizations pursuant to cultural development.
2. The Montana Arts Council consists of fifteen members appointed by the Governor for five-year terms. Meetings of the Council are called by the Chairperson when necessary. The Council is required to meet at least twice a year; however, four meetings are normally held to carry out its work. The Council, through its general meetings, or executive action, makes the final determination on all grants.
3. The Chairperson is appointed from the membership of the Council by the, Governor. The Chairperson serves at the will of the Governor and his term may exceed five years.
4. The Chairperson shall, with the advice and consent of the Council, employ an Executive Director to act as secretary to the Council and carry out the Council's programs.
5. The Chairperson appoints an Executive Committee subject to the advice and consent of the Council. The Executive Committee is empowered to consider grant requests of \$500 or less.
6. Advisory committees are established by the Council. They act only in an advisory capacity and have no policy-making authority. Generally, the Advisory Committees are as follows: visual arts, music, drama, dance, and combined projects.
7. Grant forms and submission deadlines are readily available to all those who request them. Requests for grants submitted to the Arts Council are generally reviewed by an advisory committee which then passes its recommendation on to the Council. All grants are made contingent upon Federal appropriations. The grant instrument is a contract containing certain conditions which, upon the acceptance of the grant is accomplished by the signature of the authorizing official of the requesting organization on a grant contract and return of it to the Executive Director of the Montana Arts Council.
8. The following chart depicts the organization of the Montana Arts Council. Model Rules Of Agency Organization

Organization of the Montana Arts Council



History: Sec. [2-4-201](#) MCA; [IMP](#), Sec. [2-4-201](#) MCA; Eff. 12/31/72.

10.111.201 INCORPORATION OF MODEL RULES

1. The Chairperson, acting as statutory executive officer of the Montana Arts Council in concert with the executive committee of the Montana Arts Council, adopted the Attorney General's Model Rules of Administrative Procedure on December 29, 1972.

History: Sec. [2-4-202](#) MCA, [IMP](#), Sec. [2-4-202](#) MCA; Eff. December 12, 1972.

10.111.601 ELIGIBILITY FOR GRANTS

1. Arts organizations, institutions, and community organizations are eligible to receive grants provided that each has or is in the process of obtaining IRS non-profit status as a public or private foundation.
2. Grants may be made to duly organized "temporary" committees in support of projects determined to be in the best interest of the community at large. However, should such committees accrue profits from grant funded projects it must be returned to the Montana Arts Council unless the committee received IRS non-profit status within the fiscal year of the grant award.
3. Each organization seeking General Support grants must present evidence of its non-profit status and a financial statement comparable to IRS Form 990.

4. Individuals may not receive grants from the Montana Arts Council but are eligible to be contracted for professional services. Individuals may receive partial reimbursement for travel and per diem cost in accordance with Human Resource Assistance, Special Programs "B".
5. Academic institutions and/or departments thereof are not eligible to receive grants for projects or programs which are, or clearly should be, part of their normal, educational function.
6. Grants may not be awarded to academic institutions or individuals to underwrite or supplant tuition, fees, scholarships or other educational costs in projects that involve participation for academic credits or grades, unless written exception from the Montana Arts Council is provided.
7. If the applicant for a Montana Arts Council grant is a representative of or is responsible to a "board, council, commission, etc.," a cover letter shall accompany the original application which contains the approval by signature of a quorum of such a body.
8. No grant request will be considered which contains costs incurred from any previous grant agreement.

History: Sec. [22-2-102](#) MCA; [IMP](#), Sec. [22-2-102](#) MCA; Eff. December 12, 1972.

10.111.611 GRANT CONDITIONS

1. No grants shall be issued if the sub-grantee fails to accept conditions of the grant or fails to have properly reported on any previous grant.
2. The sub-grantee must agree that the funds granted shall be expended solely for the activities described in the approved application and above, unless a specific amendment in writing has been received from the sub-grantee and subsequently approved. Any funds granted must be committed within the grant period. Significant changes requiring such amendments include:
 - a. Changes of project purpose or scope.
 - b. Changes in the key professional personnel identified in the approved proposal.
 - c. Changes in duration of the grant period.
 - d. Changes in non-profit tax exempt status.
3. After consultation with the Council unexpended funds shall be returned to the Council at the conclusion of the grant period for transmission to the federal government.
4. The sub-grantee shall maintain accounts, records, and other evidence pertaining to the costs incurred and revenues acquired under this grant. The system of accounting employed by the grantee shall be in accordance with generally accepted accounting principles, and will be applied in a consistent manner so that the project expenditures can be clearly identified. The records should clearly show that matching or cost-sharing expenditures are not less than the amount contemplated in the grant agreement and amendments thereto. Records must be maintained for three years from the official termination date of the grant period or until a Federal audit has been completed and any questions arising from it have been resolved, whichever is the lesser period.
5. Sub-grantees will submit periodic reports of expenditures and such other financial reports and descriptive reports as the Council may require. In all cases the grantee is required to submit, within 30 days after the termination of the grant period:
 - a. a final financial report on the appropriate form,
 - b. a narrative report stating what was accomplished with Endowment support.

6. During the time set out in paragraph (4) sub-grantee agrees that the Federal government and the State government shall have access to and the right to examine any directly pertinent books, documents, papers and records of the grantee involving transactions related to this grant at the principal place of business of grantee during regular business hours.
7. The sub-grantee must agree to conform with Title VI of the Civil Rights Act of 1964, which provides that "...no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." All grants are subject to review to determine whether grantees are meeting the requirements of Title VI and are eligible to continue to receive such Federal assistance.
8. It is a further condition of the grant that the sub-grantee will furnish adequate assurances to the Secretary of Labor that all professional performers and related or supporting personnel employed on projects or productions which are financed in whole, or in part, under this grant will be paid, without subsequent deduction or rebate on any account, not less than the minimum compensation for persons employed in similar activities and no part of any project or production which is financed in whole or in part under this sub-grant will be performed or engaged in or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees engaged in such project or production. Compliance with the safety and sanitary laws of Montana shall be prima facie evidence of compliance.
9. The sub-grantee must agree that the funds received under this grant shall not be used to supplant funds normally budgeted for services of the same type.
10. The sub-grantee must agree that it is the official and sole agency for the administration of the plan described in this contract.
11. The sub-grantee must agree to provide matching amounts equal to the amounts set forth in his proposal.
12. The sub-grantee must agree that funds received under this grant will not be matched with funds received under any other grant from the Federal government.
13. The sub-grantee must agree to include in all promotion, publicity, advertising and printed programs, posters, catalogs and title panels, the following credit line: "With the support of the Montana Arts Council and the National Endowment for the Arts--a Federal agency." When no printed matter is produced, verbal credit shall be given.
14. The Council may, at its discretion after consultation with the sub-grantee, terminate on 30 days written notice any grant, in whole or in part. Such termination shall not affect any commitment which, in the judgment of the Council, had become firm prior to the effective date of the termination. The sub-grantee must agree to furnish the Council, within 60 days after the date of termination, an itemized accounting of funds expended, obligated and remaining under the grant. The sub-grantee must also agree to remit within 30 days after the receipt of a written request therefor, any amount determined to be due.
15. Information collected from the public in connection with a grant project must not, without prior written approval of the Director of the Montana Arts Council, in any way be represented as information being collected by or for a State or Federal Agency.

16. Prior to publishing the results of grant activity the Montana Arts Council must be consulted regarding "acknowledgement and disclaimer" requirements established by the Federal government.

History: Sec. [22-2-102](#) MCA; IMP, Sec. [22-2-102](#) MCA; Eff. December 31, 1972.

Appendix C

Cultural Trust Administrative Rules

Administrative Rules were updated in 2012 as follows:

MONTANA ARTS COUNCIL

10.111.704

Subchapter 7

Cultural and Aesthetic Project Grant Proposals

10.111.701 ELIGIBLE APPLICANTS (1) Any person, association, or representative of a governing unit may submit an application for funding of a cultural and aesthetic project from the income of the trust fund. The term "governing unit" includes state, region, county, city, town, or Indian tribe. (History: [22-2-303](#), MCA; [IMP](#), [22-2-301](#), MCA; [NEW](#), 1985 MAR p. 1756, Eff. 11/15/85; [AMD](#), 1990 MAR p. 1458, Eff. 7/27/90; [AMD](#), 2012 MAR p. 1662, Eff. 8/24/12.)

10.111.702 APPLICATION FORM FOR GRANT PROPOSALS (1) The committee shall have prepared a standard application form for grant proposals to the committee. (History: [22-2-303](#), MCA; [IMP](#), [22-2-303](#), MCA [22-2-308](#) MCA, MCA; [NEW](#), 1985 MAR p. 1756, Eff. 11/15/85; [AMD](#), 1990 MAR p. 1458, Eff. 7/27/90; [AMD](#), 2012 MAR p. 1662, Eff. 8/24/12.)

10.111.703 APPLICATION DEADLINE (REPEALED)

(History: [22-2-303](#), MCA; [IMP](#), [22-2-301](#), MCA; [NEW](#), 1985 MAR p. 1756, Eff. 11/15/85; [AMD](#), 1990 MAR p. 1458, Eff. 7/27/90; [REP](#), 2012 MAR p. 1662, Eff. 8/24/12.)

10.111.704 ELIGIBLE PROJECTS (1) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects, including but not limited to the visual, performing, literary and media arts, history, archaeology, folk-lore, archives, libraries, historical preservation and the renovation of cultural facilities. Applicants may apply for funds in one of the following categories:

(a) Special projects: Specific activities, services, or events of limited duration and the expansion of ongoing programs to meet defined needs and support for grants which generate new sources of revenue.

(i) Each dollar in project grants must be matched with one dollar in cash or in-kind goods and services.

(ii) Applicants will be required to submit a project budget.

(b) Operational support for cultural institutions that have been in existence for at least two years.

(i) Each dollar in general support grants must be matched with one dollar in cash or in-kind goods and services.

(ii) Applicants will be required to submit financial statements (profit and loss) for the most recently completed two fiscal years.

(c) Capital expenditure projects for additions to a collection or acquisition of works of art, artifacts or historical documents; historic preservation or the construction or renovation of cultural facilities.

(i) Each dollar in capital expenditure projects grants must be matched with three dollars in cash or in-kind goods and services.

(ii) Any application for funds which may in any way affect prehistoric or historic properties must document cooperation with the state historic preservation office in evaluating the possible impact on these properties and the appropriateness of plans for project activity.

(iii) A letter from the state historic preservation office, stating their recommendations and any agreements reached with the applicant is necessary. No funds will be released until such a letter is received by the Montana Arts Council.

(iv) Applications requesting funds for facility acquisition, construction, or renovation will need to include:

(A) a summary of the total cost of the capital expenditure from beginning to end;

(B) information about sources and amounts of funds already committed and anticipated to be received; and

(C) plans for obtaining the balance of funds based on prior fund raising efforts.

(History: 22-2-303, MCA; IMP, 22-2-303, MCA 22-2-308, MCA; NEW, 1985 MAR p. 1756, Eff. 11/15/85; AMD, 1990 MAR p. 1458, Eff. 7/27/90; AMD, 2012 MAR p. 1662, Eff. 8/24/12.)

10.111.705 CHALLENGE GRANTS FOR PERMANENT ENDOWMENT DEVELOPMENT (REPEALED)

(History: 22-2-303, MCA; IMP, 22-2-301, MCA 22-2-308, MCA 22-2-309, MCA; NEW, 1985 MAR p. 1756, Eff. 11/15/85; AMD, 1990 MAR p. 1458, Eff. 7/27/90; REP, 2012 MAR p. 1662, Eff. 8/24/12.)

10.111.706 EVALUATION CRITERIA (1) Evaluation criteria is established in the application and guidelines. (History: 22-2-303, MCA; IMP, 22-2-3012, MCA 22-3-306, MCA; NEW, 1985 MAR p. 1756, Eff. 11/15/85; AMD, 1990 MAR p. 1458, Eff. 7/27/90; AMD, 2012 MAR p. 1662, Eff. 8/24/12.)

10.111.707 CRITERIA FOR RECOMMENDATIONS (1) Committee recommendations to the Legislature of those projects which meet the evaluation criteria to the extent possible also must address the following considerations:

(a) taken as a whole, grants should assist the entire state;

(b) recognizing the special needs of access to cultural and aesthetic projects and services and the unique perspective, skills, talents and contributions of the wide variety of the people of Montana, the grants recommended, taken as a whole, should reflect and affirm that diversity, and as such, provide enrichment to the population at large. These projects should encourage the expansion of opportunities for all Montanans to create, participate in, and appreciate the wide range of all cultural and aesthetic activities regardless of age, sex, race, ethnic origin, income, physical and mental ability, or place of residence; and

(c) a variety of different interests and disciplines within the eligible projects should be served and which also may include, but not be limited to, the following:

(i) service to local communities or counties, multicounty regions, and the state;
(ii) service to urban and rural populations;
(iii) special projects, operational support, and capital expenditures and
(iv) single sponsors and those representing coalitions of a number of
organizations. (History: 22-2-303, MCA; IMP, 22-2-302, MCA 22-2-306, MCA; NEW,
1985 MAR p. 1756, Eff. 11/15/85; AMD, 1990 MAR p. 1458, Eff. 7/27/90; AMD, 2012
MAR p. 1662, Eff. 8/24/12.)

10.111.708 INCREMENTAL DISBURSEMENTS OF GRANTS (REPEALED)

(History: 22-2-303, MCA; IMP, 22-2-305, MCA 22-2-306, MCA; NEW, 1985 MAR p.
1756, Eff. 11/15/85; AMD, 1990 MAR p. 1458, Eff. 7/27/90 MAR p. 1458, Eff. 7/27/90;
AMD, 2012 REP p. 1662, Eff. 8/24/12.)

Appendix D

Constitution of Montana Freedom of Speech

Constitution of Montana -- Article II -- DECLARATION OF RIGHTS

Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Provided by Montana Legislative Services

Appendix E

MAC Staff Position Descriptions

****Montana Arts Council Staff Position Descriptions On File at the Montana Arts Council**